

oral or written, with Uebersee Finanz-Korporation A. G., directly or indirectly with respect to compensation from Uebersee to me or the rendering of investment advice by me to Uebersee. My only communications, written or oral, regarding investment advice to be furnished by me or compensation to be received by me therefor, with any one connected with Uebersee Finanz-Korporation A. G., were communications to and from Mr. Fritz von Opel. The only written communication on that subject between us was the letter agreement dated October 30, 1931, of which a copy is attached to Mr. von Opel's affidavit of June 7, 1935, herein, marked Exhibit V. This agreement was cancelled pursuant to its terms by Mr. von Opel by cable early in January, 1932. Subsequently, however, upon Mr. von Opel's arrival in New York in May, 1932, we had a conversation in which it was agreed that trading should continue in the General Motors Corporation common stock described in Exhibit V under the same terms. My oral communications with Mr. Fritz von Opel on this subject were all had during his visits to New York in 1931 and 1932 during the periods specified in his said affidavit. The conversations on this subject between us in 1931 are summed up in and represented by the written agreement Exhibit V. The conversations between us on this subject in 1932 consisted in an oral agreement by Mr. von Opel that I should continue to trade on his behalf in the General Motors Corporation common stock account referred to in his affidavit, and a statement by him that with respect to any other investments which he purchased on my advice he would compensate me to the extent of 20% of any profit as measured by the difference between the purchase price and the ultimate selling price.

In none of these conversations did Mr. von Opel say that he was acting as attorney-in-fact for Uebersee Finanz-Korporation A. G., and I did not understand in any way

or form that he was purporting to bind Uebersee by the statements above described. I knew that Uebersee was not the owner of General Motors Corporation common stock which we discussed, and I now understand that at the time of our first conversations in October and November, 1931, Mr. von Opel did not own any stock of Uebersee. At the time of Mr. von Opel's visit in 1932 I knew that he had some interest in Uebersee Finanz-Korporation A. G., but I had no knowledge concerning this corporation, and I only learned incidentally through participating in a conversation in which City Bank Farmers Trust asked Mr. von Opel to supplement a previous power of attorney, that he then had a power of attorney for Uebersee Finanz-Korporation A. G. I always dealt with Mr. Fritz von Opel as a principal, and never as a representative of any company.

Beginning in May and early June, 1932, I discussed with Mr. Fritz von Opel investments to be made in this country. These discussions eventuated after some time in orders given me by Mr. von Opel either orally when he was in New York or by cable or letter from Zurich or elsewhere in Europe to purchase stock or obligations of Spur Distributing Co. Inc., Harvard Brewing Co. (Delaware), Oil Production Inc., and Oil Refineries Inc. When deliveries were made on these purchases, payments for the stock or obligations were made by Uebersee Finanz-Korporation A. G. through their bankers City Bank Farmers Trust Company & Ladenburg Thalmann & Co. In this way I knew as a practical matter that orders which Mr. von Opel gave me were being paid for by Uebersee and could have deduced that he was delivering such orders as attorney-in-fact for Uebersee, but the fact of the matter is that I dealt with him as a principal and looked to him for performance on such orders. I do not consider that I acted in any way as an attorney-in-fact or agent for Uebersee in accepting and executing the orders so transmitted

to me by Mr. von Opel which resulted in the investments above described.

The foregoing is as full a statement as I am able to make regarding this subject. I have never had a settlement with Mr. von Opel on the profits with respect to investments which Mr. von Opel made on my advice and transferred to Uebersee in the manner above described, for the reason that none of these securities have been sold and my original recommendation to Mr. von Opel was to make these investments on a long-term basis. However, if asked whether my oral agreement with Mr. von Opel above described respecting a 20% share in profits realized on investments made on my advice applied to the investments in Spur Distributing Co. Inc. and other stock which were so taken over by Uebersee, I should reply that from a legal point of view I recognize I have no claim to a share in such profits as Uebersee might ultimately realize upon a resale of such securities. As above stated, my only arrangement was with Mr. von Opel personally.

I have received compensation as officer of the various companies in which Uebersee so invested, namely as President of Harvard Brewing Co. (Massachusetts), as Vice-President of Spur Distributing Co. Inc., as President of Oil Production Inc., and as President of Oil Refineries Inc. As President of Harvard Brewing Co. (Massachusetts) (which is wholly owned, as hereinafter stated, by Harvard Brewing Co. [Delaware]), I receive a salary of \$1,000 per month, and I also have a share in the management fund, which varies according to the profits of the company but in which my share this year should approximate \$5,000. As Vice-President of Spur Distributing Co., Inc., I receive \$100 a month. As President of Oil Refineries, Inc., which is managed under management contract by Crittenden Engineering Co., as hereinafter explained, I receive \$500 per month. As President of Oil Production



Inc., which is managed under similar management contract by Crittenden Engineering Co., I receive \$250 a month. In addition, as director of these respective companies as hereinafter stated I receive director's fees aggregating about \$2,000 a year.

(b) The course of the investments made by Uebersee Finanz-Korporation A. G. in American corporations and the method of their management to the present time are as follows, according to my knowledge as refreshed by reference to the corporate records and telegrams from the various corporate offices:

1. My first connection with Spur Distributing Co., Inc., a Delaware corporation, occurred in May, 1932, when I was informed that the New York Stock Exchange firm of Burden Cole & Co. were selling a large block of Spur Distributing Co., Inc., by reason of the financial difficulties of the firm. In October, 1931, Mr. Fritz von Opel had informed me that he had previously purchased for his personal account 4,000 shares of this stock. I recommended to him in May, 1932, to buy the stock offered by Burden Cole & Co., and he made an offer of \$5 per share for at least 50,000 shares of stock. This stock was delivered to City Bank Farmers Trust Company for account of Uebersee in various instalments beginning June 30, 1932, and paid for out of such account.

The certificate of incorporation of Spur Distributing Co., Inc., shows that it was incorporated in Delaware on April 19, 1928. For the corporate records regarding Spur Distributing Co., Inc., I telegraphed to H. D. Hines, Secretary and Treasurer of the company at Nashville, Tennessee, and under date of June 10, 1935, received the following telegraphic reply:

"I, H. D. Hines, Secretary and Treasurer of the Spur Distributing Company do hereby certify to the



following statements as true according to the records of the company stop 1, the original incorporators of the Spur Distributing Company were Joseph B. Thomas, J. M. Houghland and Alan Fox stop 2. the following are the names of all the directors of the Spur Distributing Company just preceeding change in control of its capital stock in July nineteen thirty-two J. M. Houghland, Joseph B. Thomas, J. N. Cole, William Burden, H. D. Hines stop at a special meeting of directors held on July twenty first nineteen thirty-two the by-laws were amended so as to provide for an increase in the number of directors from five to seven. In addition to the above five directors, Theodore Hoffacker and Werner C. von Clemm were elected to the directorate stop at the annual stockholders meeting held on April eighteenth nineteen thirty-three the following directors were elected for the ensuing year, J. M. Houghland, Joseph B. Thomas, H. D. Hines, William Burden, Herbert W. Goepel, Werner C. von Clemm, Theodore Hoffacker stop at the annual meeting of stockholders held on April third nineteen thirty-four the by-laws were amended reducing the directorate from seven to five members. The directors elected at this meeting for the ensuing year were: J. M. Houghland, Joseph B. Thomas, Theodore Hoffacker, Werner C. von Clemm, Herbert W. Goepel stop there was no change in the directorate for the year nineteen thirty-five, All previous members being re-elected by the stockholders at the annual meeting held April second nineteen thirty five stop 3, the books and records of the company are kept by H. D. Hines, Secretary and Treasurer of the company at Nashville, Tennessee, stop 4. the following extract is from the minutes of meeting of board of directors held April third nineteen thirty four stop the chair announced the first order of business was the election of officers

for the ensuing year and thereupon, on motion duly made and seconded and unanimously carried, the following officers were duly elected, J. M. Houghland, President, Joseph B. Thomas, Vice President, Theodore Hoffacker, Vice President, H. D. Hines, Secretary & Treasurer, A. E. Peterson, Asst. Treasurer upon motion of Mr. Hoffacker, seconded by Mr. Joseph B. Thomas the compensation of the foregoing officers was fixed effective January first nineteen thirty five as follows. J. M. Houghland, eighteen thousand dollars, Joseph B. Thomas, twelve hundred dollars, Theodore Hoffacker twelve hundred dollars, H. D. Hines seventy eight hundred dollars, A. E. Peterson thirty three hundred dollars stop 5. the controlling block of stock of the Spur Distributing Company seventy one thousand nine hundred thirty eight shares has been voted by Mr. Theodore Hoffacker at stockholders meeting held on April eighteenth nineteen thirty three and April three nineteen thirty four and April second nineteen thirty five stop."

Spur Distributing Co., Inc. has 140,000 shares of no par capital stock outstanding out of 400,000 shares authorized. It is my understanding that Uebersee Finanz-Korporation, A. G., owns 75,589 shares; that J. M. Houghland, President, owns 24,000 shares; that Joseph B. Thomas, Vice-President, owns 25,000 shares; and that interests connected with Werner C. von Clemm own 8,000 shares.

There exists and existed at the time of my first knowledge of the company a voting trust under which there are deposited 63,501 shares of stock. The voting trustees at the time of my first acquaintance with the company were Mr. Houghland, Mr. Thomas and Mr. John N. Cole. On or about July 31, 1932, I was elected a voting trustee to replace Mr. Cole. From time to time I have voted at stockholders meetings of the company stock owned by Uebersee under proxies

signed sometimes by Mr. Fritz von Opel as attorney-in-fact for Uebersee and sometimes by Hans Frankenberg and Adolph Gaeng as nominees for Uebersee.

My nominal compensation from Spur Distributing Co., Inc., is due to the fact that my duties as Vice-President do not require much of my time. The company is managed by J. M. Houghland, the President, under a management contract dated January 1, 1933, providing in substance for a salary to him of \$1,500 per month and an interest of 5% in the profits of the company plus an additional 5% interest until \$200,000 has accrued thereunder. Under this management agreement Mr. Houghland received compensation in the amount of \$31,766.56 during 1933 and in the amount of \$36,104.27 during 1934. His compensation prior to the management contract was \$18,000 a year.

To my knowledge neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has ever attempted to participate in the management of the company or purported to give directions with reference thereto. The company's corporate records are in charge of Mr. H. D. Hines, Secretary and Treasurer, and are kept at the offices of the company at Nashville, Tennessee. Its books of account are in charge of Mr. Alver Peterson, Assistant Treasurer, under Mr. Hines, and are kept at the offices in Nashville, Tennessee.

The directors of the company since the beginning of my acquaintance with it have been J. M. Houghland, Joseph B. Thomas, Werner C. von Clemm, John N. Cole (resigned April, 1933), Herbert W. Goepel (elected April, 1933), and myself. Approximately eight meetings of the directors have been held since July, 1932, some in New York and some in Nashville, Tennessee. I have attended them all. Regular stockholders meetings have been held annually in New York, primarily because the smaller stockholders were located here.



2. Harvard Brewing Co. (Delaware) was incorporated in the State of Delaware on December 3, 1932, according to the statement made by the company in its listing application No. 584 to the New York Curb Exchange. According to the same statement Harvard Brewing Co. (Massachusetts) was incorporated in the State of Massachusetts in October, 1932, with 1,000 shares of common stock of no par value; it acquired in December, 1932, the plant of the former Harvard Brewing Co. in Lowell, Massachusetts; and in Uebersee against payment in cash and against an exchange of stock 94,000 further shares of Harvard Brewing Co. (Delaware). The purchase price of part of this stock has not been paid to Union de Placements et de Participations, and the stock is retained by Union as collateral for the debt of Uebersee.

From September 18, 1933, to August 16, 1934, A. C. O. Inc., sold to Uebersee a total of 112,960 shares of Harvard Brewing Co. (Delaware) for a total consideration of \$460,810. A. C. O. Inc., is a Delaware corporation organized in November, 1932, of which I was and am President and the principal stockholder of which was and is Amalgamated Patents, S. A., a Luxemburg corporation. I understand that Mr. Fritz von Opel has an interest in Amalgamated Patents, S. A., but that Uebersee Finanz-Korporation, A. G., has not now and has never had any interest of stock ownership in either A. C. O. Inc., or Amalgamated Patents, S. A., directly or indirectly.

On December 7, 1932, I was elected a director and Vice-President of Harvard Brewing Co. (Delaware), and on July 31, 1933, I was elected Chairman of the Board of Harvard Brewing Co. (Massachusetts).

Director meetings of Harvard Brewing Co. (Delaware) are held approximately monthly in the office of Hallgarten & Co., New York, and those of Harvard Brewing Co. (Massachusetts) are held approximately monthly at Lowell, Massachusetts. The books and records of each company

are in the custody of their respective Secretaries, in the case of the former at the company's office in New York, and in the case of the latter in the company's office in Lowell, Massachusetts. Annual stockholders meetings are held regularly, in the case of the former company at the office of Hallgarten & Co., in New York and in the case of the latter company at Lowell, Massachusetts.

I came President of Harvard Brewing Co. (Massachusetts) on June 1, 1934. In addition to my participation in the management fund of Harvard Brewing Co. (Massachusetts), as above described, there also participate six other officers.

I personally own shares of stock of Harvard Brewing Co. (Delaware), and am registered as owner in respect of a further 76,100 shares which are owned principally by A. C. O. Inc., and Union de Placements et de Participations, S. A., and some of which may be owned by Uebersee but are held by A. C. O. Inc., as collateral for the debt above described on the sale of such stock.

To the best of my knowledge neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has at any time assumed to direct or to influence the management of either Harvard Brewing Co. (Delaware) or Harvard Brewing Co. (Massachusetts). With respect to this question I addressed a telegram of inquiry to Arthur C. Sullivan, Clerk of Harvard Brewing Co. (Massachusetts) and received under date of June 10, 1935, the following reply addressed to Davis Polk Wardwell Gardiner & Reed:

"Fritz von Opel elected director Harvard Brewing Co. Massachusetts corporation December Nineteen Thirty Three stop Has attended one meeting of directors on May Twenty Seven Nineteen Thirty Five stop Fritz von Opel has never directly or indirectly at any time exercised any control over or been connected

with management of Harvard Brewing Co Massachusetts as director officer or otherwise stop Mr von Opel has to my knowledge at no time exercised any control over or in any way been connected with the manager of Harvard Brewing Co Massachusetts stop The Uebersee Finanz-Korporation A. G. unknown to me as in any way being connected with Harvard Brewing Co Massachusetts and has at no time exercised control over or been in any way connected with management of Harvard Brewing Co Massachusetts"

I also refer to letter of Hugh Sudall, Secretary of Harvard Brewing Co. (Delaware) dated June 11, 1935, and addressed to Davis Polk Wardwell Gardiner & Read and to the attached statement of Mr. Sudall.

Attached hereto marked Exhibit A-1 is a certificate by Mr. Sullivan as Clerk of Harvard Brewing Co. (Massachusetts) with respect to Mr. von Opel's connection with the corporation. Attached hereto marked Exhibit B-1 are two certificates of Mr. Sullivan as such Clerk with respect to my connection with the corporation, and the organization and operation thereof.

3. I am President of Oil Refineries Inc., a Louisiana corporation organized by Amalgamated Patents, S. A. The following information with regard to Oil Refineries Inc., is furnished me from the corporate records in a telegram from H. T. McGown, Secretary of the corporation, at Shreveport, Louisiana, dated June 11, 1935:

"Replying your request reference Oil Refineries Incorporated stop Corporation was organized March Twenty fourth nineteen thirty three by M. J. Grogan, H. H. McMurphy, Byron A. Irwin, D. J. Herndon and B. P. Crittenden as original incorporators and directors stop at organization meeting of board of directors



held Shreveport Louisiana March twenty eighth nineteen thirty three Byron A. Irwin, D. J. Herndon and H. H. McMurphy resigned as directors and Theodore Hoffacker, H. D. Hines and Albert Ensslen elected to fill vacancies stop at annual meeting of stockholders May second nineteen thirty four Theodore Hoffacker, M. J. Grogan, B. P. Crittenden, A. Ensslen and H. Goepel elected directors and same board reelected at annual meeting held May thirty first nineteen thirty five who now constitute present board stop all meetings shareholders held Shreveport Louisiana stop directors meetings in nineteen thirty three Shreveport March twenty eighth April first April fifth April thirteenth New York April eighteenth Shreveport September ninth in nineteen thirty four at Shreveport January thirteenth New York April third annual meeting Shreveport May second in nineteen thirty five New York February nineteenth February twenty seventh annual meeting Shreveport May thirty first stop qualifying shares transferred immediately after organization and held by Crittenden one share Grogan one share Theodore Hoffacker agent nine hundred ninety eight shares stop full one thousand shares transferred to January seventeenth nineteen thirty four to Hanns Frankenberg and Adolf Gaeng fifty three Rosengarten Starasse Zuerich Switzerland who have been record owners all shares since that date stop books of account kept by T. H. Grobe Treasurer at Shreveport Louisiana corporate record minute books and stock certificate book kept by H. T. McGown Secretary Fort Worth Texas stop at special meeting board of directors held New York April third nineteen thirty four on waiver signed all directors Grogan and Hines absent the following resolution unanimously adopted quote be it resolved that the salary of Mr. Theodore Hoffacker as President of the corporation be and the same is hereby

fixed at the sum of five hundred dollars monthly effective as the first day of March nineteen thirty four and that Mr. Hoffacker as President of the corporation shall furnish to the corporation the use of his office at fifty six Pine Street in the City of New York as the office of the corporation in that city without expense of any sort to the corporation unquote at annual and special meetings of shareholders stock issued in name of Hanns Frankenberg and Adolf Gaeng was voted by Theodore Hoffacker as proxy stop."

After having organized the corporation, Amalgamated Patents, S. A., sold its outstanding 1,000 shares of stock to Uebersee Finanz-Korporation, A. G., for \$10,000 on April 27, 1933, and a \$200,000 Five-Year Mortgage 6% Note on May 31, 1933, for \$200,000.

Regular directors meetings have been held principally at Shreveport, Louisiana, but sometimes in New York. Stockholders meetings have been regularly held in Shreveport, Louisiana. The place of business of the corporation is in Shreveport, Louisiana, where its books and corporate records are kept.

The company is managed under a management contract dated April 18, 1933, by Crittenden Engineering Co., a Delaware corporation, for a compensation which amounted to \$20,516.28 for the year ending February 28, 1934, and to \$14,400 for the year ending February 28, 1935.

To my knowledge neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has at any time assumed to direct or influence the management of the company. On this subject I telegraphed M. J. Grogan, Vice-President of the company, and received through Davis Polk Wardwell Gardiner & Reed the following reply dated June 11, 1935:

"Retel the management of Oil Refineries Inc. has not at any time been interferred with by Uebersee Fi-

nanz Korp AG and we have never received any communication of any kind from them and the same is true from Mr Fritz von Opel whom we have only met once and who is not a director or officer of our company."

4. I am also President of Oil Production Inc., a Louisiana corporation, and was likewise organized by Amalgamated Patents, S. A. The facts of record with respect to this corporation are contained in a telegram addressed to me from Shreveport, Louisiana, from Mr. H. T. McGowan as Secretary under date of June 10, 1935, as follows:

"Replying your request reference Oil Production Incorporated stop Corporation was organized April twenty ninth nineteen thirty three by H. T. McGowan, B. P. Crittenden, M. J. Grogan, Byron A. Irwin and D. J. Herndon as original incorporators and directors stop at organization meeting of Board of Directors held Shreveport Louisiana McGowan Irwin and Herndon resigned as directors and Theodore Hoffacker, Albert Ensslen and Herbert Goepel elected to fill vacancies stop at annual meeting shareholder May second nineteen thirty four Theodore Hoffacker, M. J. Grogan, B. P. Crittenden, A. Ensslen and H. Goepel elected directors and same board reelected at annual meeting held May thirty first nineteen thirty five who now constitute present board stop special meeting shareholders held fifty six Pine Street, New York City May fifteenth nineteen thirty three for purpose ratification issuance of bonds stop annual meeting of shareholders held Shreveport May second nineteen thirty four and May thirty first nineteen thirty five stop directors meetings held in nineteen thirty three Shreveport April twenty ninth May second May twelfth New York May fifteen Tyler Texas June nineteenth Shreveport June thirtieth New York July eighteenth July



twenty fourth Shreveport July twenty fifth September ninth New York September eighteenth October twentieth held in nineteen thirty four at Shreveport January thirteenth New York March ninth April third annual meeting Shreveport May second New York August twenty fourth Shreveport September twenty seventh November ninth and in nineteen thirty five New York February twenty eighth April twenty second annual meeting Shreveport May thirty first stop qualifying shares transferred immediately after organization and shares held by Crittenden two M. J. Grogan two Theodore Hoffacker Agent seventeen hundred ninety six until October twenty third nineteen thirty four at which time corporation acquired by purchase from Theodore Hoffacker Agent two hundred shares leaving outstanding fifteen hundred ninety six shares Theodore Hoffacker Agent stop books of account kept by T. H. Grobe Treasurer at Shreveport Louisiana corporate records minute book and stock certificate book kept by H. T. McGowan Secretary Fort Worth Texas stop at special meeting of Board of Directors held New York April third nineteen thirty four on waiver signed all directors Grogan only absent following resolution unanimously adopted quoted be it resolved that the salary of Mr. Theodore Hoffacker as President of the Corporation be and the same is hereby fixed at the sum of two hundred fifty dollars monthly effective as of the first day of March nineteen thirty four and that Mr. Hoffacker as President of the Corporation shall furnish to the Corporation the use of his office at fifty-six Pine Street in the City of New York as the office of the company in that city without expense of any sort to the corporation unquote at annual and special meetings of shareholders stock issued in name of Theodore Hoffacker agent was voted by him in person and two shares each outstanding in name of Grogan and Crittenden were

voted by them in person stop certificate of incorporation dated May first nineteen thirty three follows quote State of Louisiana I the undersigned Assistant Secretary of State of the State of Louisiana do hereby certify that a certified copy of articles of incorporation of the Oil Production, Inc., domiciled at Shreveport parish of Caddo State of Louisiana A corporation organized under the provisions of act no. two fifty of the session acts of the legislature of Louisiana approved July eighteenth nineteen twenty eight being an act before Cecil Morgan a notary public in and for said parish and State of date the twenty ninth day of April nineteen thirty three and recorded in blank book no. blank folio blank of the records of the recorder of the parish of Caddo of date the twenty ninth day of April nineteen thirty three at seven thirty five o'clock pm the date and hour when the corporate existence of the said corporation began has been filed and recorded in this office in book record of charters no. one forty two folio blank *et seq* on the first day of May nineteen thirty three and the incorporation tax and all other fees having been paid as required by law the said corporation is authorized to transact business in this state subject to the restrictions imposed by law and especially the provisions of act no. two fifty of the legislature of Louisiana approved July eighteenth nineteen twenty eight period witness my signature and authenticated with the impress of my seal of office at the state capital in the City of Baton Rouge this first day of May A. D. nineteen thirty three signed R. H. Flowers Assistant Secretary of State seal unquote to all of which I certify as Secretary of Oil Production Incorporated."

The entire outstanding capital stock of Oil Production Inc., was purchased by Amalgamated Patents, S. A., and

by A. C. O. Inc., 190 shares being purchased by the former company on May 23, 1933, for \$19,000 and 1610 shares by A. C. O. Inc., on September 21, 1933, for \$161,000. The reference to me as "agent" in the above-quoted telegram from Mr. McGown refers to me as agent for Amalgamated Patents, S. A., and for A. C. O. Inc., respectively with regard to the shares so subscribed by them. All these shares are still retained by these companies except for 200 shares which were redeemed on October 11, 1934.

The outstanding bonds of Oil Production Inc., in the amount of \$451,000 (reduced from \$523,000 through redemption on October 24, 1934) are all owned by Uebersee Finanz-Korporation, A. G., which purchased them on various dates beginning July 7, 1933, from A. C. O. Inc. These bonds, which A. C. O. Inc., sold to Uebersee at 100, were purchased by it from Oil Production Inc., for 70.

The place of business of Oil Production Inc., is Shreveport, Louisiana. Its corporate books and records have been kept, and its directors and stockholders meetings conducted in a manner substantially similar to those of Oil Refineries Inc., as above stated.

As in the case of Oil Refineries Inc., neither Uebersee Finanz-Korporation, A. G., nor any director or representative thereof, nor Mr. Fritz von Opel has influenced, nor sought to influence the management of the company. On this subject I quote a telegram received by me from Mr. Grogan as Vice-President of Oil Production Inc., through Davis Polk Wardwell Gardner & Reed dated June 11, 1935, as follows:

"Retel the management of Oil Production Inc has not at any time been interfered with by Uebersee Finanz Korp AG and we have never received any communication of any kind from them and the same is true of Mr Fritz von Opel whom we have only met once and who is not a director or officer of our company"



Oil Production Inc., like Oil Refineries Inc., is managed under a contract dated January 13, 1934, by Crittenden Engineering Co. The compensation paid to Crittenden Engineering Co., under this contract was \$3,414.33 for the period ended February 28, 1934, and \$23,029.05 for the period ended February 28, 1935.

(c) In consequence of my knowledge of these companies I state categorically that they function independently of any external control and with complete and entire regard to due corporate forms despite the interest that Uebersee has in them as herein stated, and that Uebersee Finanz-Korporation, A. G., is not doing business in any form in the United States through the agency or by the means of these companies. Nor is Uebersee Finanz-Korporation, A. G., engaged in business in the United States in any way or form through any other company or any agent to the best of my knowledge and belief.

THEODORE HOFFACKER.

Sworn to before me this  
12th day of June, 1935.

WILLIAM FENTON MARIN,  
Notary Public.

Kings Co. Clk's No. 758, Reg. No. 7380,  
N. Y. Co. Clk's No. 965, Reg. No. 7M583,  
Commission expires March 30, 1937.

(Seal)

**AFFIDAVIT OF FRITZ VON OPEL, DATED  
JUNE 12, 1935.**

**IN THE  
DEPARTMENT OF THE TREASURY  
OF THE UNITED STATES OF AMERICA.**

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**In the Matter**

**of**

**The Application of UEBERSEE FINANZ-KORPORATION AKTIEN  
GESELLSCHAFT, regarding Gold held for its Account in  
the United States.**

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**STATE OF NEW YORK      }  
COUNTY OF NEW YORK } ss.:**

**FRITZ VON OPEL, being duly sworn, says:**

I made an affidavit herein verified June 7, 1935. I have read the affidavit herein of Mr. Theodore Hoffacker verified June 12, 1935, and state that the same is a correct statement of my recollection with regard to the conversations between us and other acts performed by me as set forth by Mr. Hoffacker.

To my knowledge Uebersee Finanz-Korporation A. G. and I myself have never sought in any way to influence or dominate the activities of Spur Distributing Co., Inc., or Harvard Brewing Co. (Delaware) or Harvard Brewing Co.

(Massachusetts) or Oil Production Inc., or Oil Refineries Inc., except in so far as Uebersee might lawfully control the operations of those companies in its capacity as stockholder. The operation of those companies has been at all times independent and separate from the operation of Uebersee Finanz-Korporation A. G.

Investments of Uebersee Finanz-Korporation A. G. outside the United States exist in Switzerland to the extent of several hundred thousand francs, in Africa where assets are held by an English company in which Uebersee owns stock representing an investment by Uebersee of about 120,000 English shillings, and in Germany, where formerly Uebersee owned bonds to the value of several hundred thousand German marks. My knowledge on this subject has been obtained from conversations with Dr. Frankenberg and from examining the records of Uebersee in Zurich.

FRITZ VON OPEL

Sworn to before me this  
12th day of June, 1935.

WILLIAM PEYTON MARIN,  
Notary Public

Kings Co. Clk's No. 758, Reg. No. 7380,  
N. Y. Co. Clk's No. 965, Reg. No. 7M583,  
Commission expires March 30, 1937.

(Seal)



# EXHIBITS ATTACHED TO AFFIDAVITS OF MEIER AND VON OPEL.

## EXHIBIT A.

*Copy*

Handelregister  
(Register of Commerce)  
Zurich.

(Stamp)

By-Laws of  
UEBERSEE FINANZ KORPORATION A. G.  
OVERSEAS FINANCE CORPORATION LTD.

A. *Firm, Name, Domicile, Purpose*

### Paragraph 1.

Under the firm name "Uebersee Finanz-Korporation A.G." "Overseas Finance-Corporation Ltd." there exists based on these By-Laws a joint stock company, with domicile at Zurich.

### Paragraph 2.

Purpose of the Corporation is the transaction of foreign Banking and Commercial business, as well as any kind of Banking and Commercial business, and the acquisition and administration of participations. The Corporation may conclude any and all legal transactions which it may consider as conducive to the achievement of the purpose of the Corporation; it is also entitled to acquire and dispose of real estate.

### Paragraph 3.

The duration of the life of the corporation is indefinite.

*B. Capital of the Corporation**Paragraph 4.*

The capital of the Corporation amounts to Fr. 500,000, consisting of 100 bearer shares with numbers 1-100 at Fr. 5,000. par value. The subscribers to the stock are liable only for the payment of 50 per cent of the par value, in accordance with O. R. Section 636, paragraph 3.

*Paragraph 5.*

The amount of the payment will be fixed by the general meeting.

The latter is also authorized to increase or reduce the stock capital in conformity with the capital requirements, and also to convert the bearer shares into shares registered in a name, as well as to amortize the stock in accordance with O. R. Section 628, paragraph 1. It is furthermore authorized to issue bonds.

*C. Organization*

The organs of the Corporation are:

- I. The general meeting.
- II. The Board of Directors.
- III. The Comptroller.

*I. General Meeting**Paragraph 6.*

The functions of the general meeting are essentially the following:

1. Adoption of the annual accounts, the balance sheet and the report of the directors, as well as of the Comptroller's report; resolution as to the application of the net earnings and release of the directors.

2. Election of the President and members of the Board of Directors, also of the Comptroller and any special delegates, if any, in accordance with O. R. Section 650.

3. Resolutions on motions of the Board of Directors, also on motions of individual stockholders.

4. Alterations of the By-Laws.

5. Dissolution of the Corporation.

6. Resolutions as per paragraph 5.

#### Paragraph 7.

The regular general meeting takes place within four months after the conclusion of the fiscal year.

Special general meetings are called, in the discretion of the Board of Directors, or within two weeks if requested by one or more stockholders representing at least one-tenth of the stock capital. Such request to be made by such stockholders or their representatives in written form stating the purpose thereof. If all stockholders are represented, a special general meeting may be held at any time.

#### Paragraph 8.

The annual accounts and the Comptroller's report are open to the inspection of the stockholders in the office of the Corporation for ten days preceding the regular general meeting.

#### Paragraph 9.

The President of the Board of Directors or in his absence another member of the Board of Directors will preside at the general meeting.



The Chairman is entitled to vote and has the casting vote.

Paragraph 10.

Each represented share of stock is entitled to ten votes. No stockholder may assemble in his own hand more than a fifth part of the votes represented.

Paragraph 11.

The general meeting passes its resolutions and executes its elections by absolute majority of the votes represented; it is competent to pass resolutions if at least one-fourth of all shares of stock is validly represented.

There are excepted resolutions in reference to Lit. 4, 5 and 6 of paragraph 6. For such resolutions a two-thirds majority of the entire stock capital is required.

In the event of a regularly called general meeting not being competent to pass resolutions, the Board of Directors is required to call a second general meeting within eight days, which will then be authorized to vote with absolute majority on the matters before the first general meeting irrespective of the number of shares of stock represented.

Paragraph 12.

Divisions will be made by open or secret vote as decided by the majority of those present.

Paragraph 13.

Motions of stockholders have to be delivered to the Board of Directors at least fourteen days before the meeting and the Board of Directors has to present the same to the meeting. The meeting may decide as to the time at which such motions will be dealt with. If all stockholders are represented, motions which have been made at the meeting itself may also be voted on.

## Paragraph 14.

The call for all general meetings has to be issued at least ten days previously.

II. *The Board of Directors*

## Paragraph 15.

The Board of Directors consists of one to five members. The number of the members will be decided by the general meeting.

Members of the Board of Directors must be stockholders and have to deposit with the Corporation at least one share of stock.

## Paragraph 16.

The term of office is one year. The retiring members are subject to re-election. Should any substitutes become necessary, the elections for same will take place at the next general meeting.

## Paragraph 17.

The Board of Directors undertakes all those functions which are not expressly reserved for the general meeting either by law or the Corporation's By-Laws.

The Board of Directors may delegate a part of its functions to one or more of its members, or to third parties who need not be members of the Corporation.

In particular it is the duty of the Board of Directors to

1. Exercise supervision of the entire conduct of the business.
2. To appoint and release managers and agents (powers of attorney).

3. Acquire real estate.

4. Prepare all business to be placed before the general meeting.

5. Effectuate the resolutions of the general meeting.

#### Paragraph 18.

The meetings of the Board of Directors are called by the President. It is competent for resolutions, if at least two members, or the President alone, are present. The party presiding at such meetings has the casting vote.

### III. The Comptroller

#### Paragraph 19.

The general meeting entrusts one or more Comptrollers who need not be members of the Corporation with the task of submitting to the general meeting a report on the balance sheet and the accounts presented by the Board of Directors. The audit of the balance sheet and of the profit and loss account is to be made in accordance with the provisions of the law of obligations (obligationenrecht).

#### D. Annual Accounts and Division of Net Earnings

#### Paragraph 20.

The books are to be closed on December 31st. Inventory and balance sheet are to be made as of that date.

Balance sheet as well as profit and loss account, are to be rendered in accordance with the provisions of O. R. Section 656 and subsequent ones.

#### Paragraph 21.

The division of earnings will be undertaken by the general meeting on motion of the Board of Directors, provided, however, that such division may only be made after ten per cent have been transferred to reserve account.



*E. Dissolution of the Corporation**Paragraph 22.*

The dissolution of the Corporation takes place in accordance with legal requirements.

*F. Announcements**Paragraph 23.*

The publications of the Corporation will be announced in the Schweizerische Handelsamtsblatt (Swiss official bulletin of Commerce). Non-local stockholders may designate a special representative to whom a special announcement is to be sent by registered mail.

Zurich, May 24, 1922.

for the correctness of the Company:  
Zurich, May 24, 1933

br.

Tax and Stamp. Fr. 15.40  
(seal)

HANDELSREGISTER  
DES KANTONS ZUERICH.  
(Register of Commerce  
of Canton Zurich)  
(Signature)

EXHIBIT B.

CERTIFICATE

The undersigned official Bureau hereby certifies that the  
firm Uebersee Finanz-Korporation A. G.  
Overseas Finance-Corporation Limited  
domiciled at Zurich 1, St. Peterstrasse 16.

a joint stock company existing since June 3, 1922 was entered in the Register of Commerce.

Capital Frs. 500,000 (francs five hundred thousand) divided into 100 bearer shares at Frs. 5,000 each fully paid.....

The Corporation may be legally bound by signature—any two jointly—of the following:

the President of the Board of Directors:

Dr. Eugen Meier, attorney-at-law, of Stäfa, domiciled in Liestal;

the members of the Board of Directors:

Dr. Hanns Frankenberg, Banker, of Austrian Citizenship, in Zurich,

Dr. Josef Henggeler, attorney-at-law, of Unterägeri, domiciled in Höngg.

Purpose: Transaction of foreign Banking and Commercial business, as well as any other kind of Banking and Commercial business, also acquisition and administration of participations, etc., etc. (Last publication in the Swiss official bulletin of Commerce (Schweiz. Handelsamtsblatt) No. 145 of June 1932, page 1553.) Volume F folio 16246.

Zurich, August 15, 1933

#### EXHIBIT K.

*Minutes of the 9th Regular General Meeting of*

UEBERSEE FINANZ KORPORATION, A. G. ZURICH

Saturday, March 14, 1931, at 10 A. M.

at the office of Dr. Martin Bloch,

Bahnhofstrasse 82, Zurich I.

Present on their own behalf and as proxy of stockholders:

Dr. Martin Bloch, Attorney-at-Law, Zurich I,

Mr. Adolf Gaeng, Certified Accountant, Zurich 6.

Mr. Martin Bloch took the chair, and took note, that all stockholders were present or represented. Dr. Martin Bloch further took note that the notice for the general meeting had been issued in accordance with the provision of the by-laws, and that the meeting was competent to pass resolutions regarding the subjects on the agenda.

*Subject No. 1.—Presentation of the annual report, and of the balance sheet for the year 1930.*

Dr. Bloch states that the annual report and accounts have been open to inspection by stockholders in his office during the period provided for in the by-laws. He said that due to the low level of stock prices a large loss had occurred in the business year just expired, and that the business year 1930 closed with a loss of Fres. 18,680.23, which changed the gain carried forward from January 1, 1930 of Fres. 3,614.50 to a loss of Fres. 15,065.73 carried forward per January 1, 1931.

*Subject No. 2.—Report of the Comptroller.*

Dr. Martin Bloch read to the meeting the written report of the Comptroller of March 2, 1931. The comptroller moved that the balance sheet and profit and loss statement as of December 31, 1930, be adopted, and those responsible be released from their responsibilities.

*Subject No. 3.—Release of Board of Directors and Comptroller.*

In compliance with the motion of the comptroller the balance sheet and profit and loss statement as of December 31, 1930, was unanimously adopted and declared final; also the report of the comptroller of March 2, 1931, was adopted.

The Board of Directors and Comptroller were released with an unanimous vote of thanks.



*Subject No. 4—Election of the Board of Directors and  
of the Comptroller.*

There were elected as director for a new term:  
Dr. Martin Bloch, Attorney at Law, Zurich I, and as  
Comptroller:  
Mr. Adolf Gaeng, Certified Accountant, Zurich 6.

*General Remarks:* In the resolutions and elections under  
Subjects No. 3 and 4 the stockholders present or their  
proxies have refrained from voting, as far as their own  
person was in question.

Close of the meeting 10:30.

Chairman and acting Secretary  
(signed) DR. MARTIN BLOCH.

*EXHIBIT L.*

*Minutes of the Tenth Regular General Meeting of*

UEBERSEE FINANZ KÖRPÖRATION, A. G., ZURICH  
held on Friday, May 6th, 1932, at 9 o'clock in the fore-  
noon at the domicile of the Corporation, Bahnhofstrasse  
82, Zurich I.

Present: Dr. Martin Bloch, attorney-at-law, director,  
Zurich I,

Mr. Adolf Gäng, comptroller, Zurich 6,  
Dr. Hanns Frankenberg, Banker, Zurich I,  
Dr. Jös. Henggeler, attorney-at-law, Zurich I,  
Dr. Hugo Wyler, as acting secretary

Dr. Martin Bloch presided as chairman, and took note that  
all stockholders were present or represented, viz:

Mr. Fritz von Opel, represented by Dr. Hanns  
Frankenberg, Zurich, by virtue of written  
proxy of

Apr. 29 1932	497 shares
Dr. Martin Bloch	2 "
Dr. Hanns Frankenberg	1 "
Total	500 shares

The voting power of Dr. Frankenberg was reduced to 100 votes.

On inquiry by Dr. Martin Bloch all stockholders present and by proxy acknowledged the notice issued as in order and binding. The meeting was, therefore, competent for resolutions on the subjects on the agenda. Dr. Hugo Wyler was appointed acting secretary, Dr. Henggeler as teller of votes.

#### AGENDA

1. Presentation of annual report and of annual balance sheet and profit and loss account for the year 1931.
2. Report of the comptroller.
3. Release of Board of Directors and comptroller.
4. Election of Board of Directors and comptroller.
5. Various subjects.

*Subject No. 1—Presentation of annual report and annual balance sheet and profit and loss account for the year 1931*

Dr. Martin Bloch reported, that in the year 1931 the continuing depression caused a further loss of Frs. 6,789.38 composed of general expenses, interest and taxes. The total loss, therefore, amounted to Frs. 21,855.11 which was carried forward to new account as of January 1, 1932.

*Subject No. 2—Report of the Comptroller*

Dr. Hugo Wyler read to the meeting the written report of the comptroller of April 2, 1932. The comptroller moved that the balance sheet and profit and loss account as of Dec. 31, 1931 be adopted, and those responsible be released.

*Subject No. 3—Release of Board of Directors and Comptroller*

In compliance with the motion of the comptroller, the balance sheet and profit and loss account as of Dec. 31, 1931 was unanimously adopted and declared final; also the comptroller's report of April 2, 1931 was adopted.

The Board of Directors and the comptroller were in separate, unanimous, votes released with thanks. Dr. Martin Bloch was also released for the period from Jan. 1, 1932 to May 6, 1932. It was duly noted that Dr. Martin Bloch took no part in these votes.

*Subject No. 4—Election of Board of Directors and Comptroller*

Dr. Martin Bloch handed in his resignation as a director of the Corporation. The general meeting gave him a vote of thanks for his many years' activity on behalf of the corporation. Thereupon there were elected as members of the Board of Directors:

Dr. Eugen Meier von Stäfa, attorney-at-law, Liestal, as Pres.,

Dr. Hanns Frankenberg, Banker, of Austrian Citizenship, Zurich 7.

Dr. Josef Henggeler, attorney-at-law, of Unterägeri, Höngg.

The members of the Board of Directors to sign for the Corporation, any two jointly.



The domicile of the Corporation was removed to St. Peterstrasse 16.

There was elected as comptroller

Mr. Adolf Gäng, certified accountant, Zurich 6.

*Subject No. 5—Various*

Dr. Frankenberg made the motion to pay in the remaining 50% of the stock capital. According to paragraph 4 of the by-laws there were, therefore, Frs. 250,000 to pay in.

There was unanimously resolved:

1. to pay in the stock capital—of which heretofore 50% had been paid in, in full.
2. to authorize the Board of Directors to call up the outstanding 50% in accordance with the legal provisions of the Swiss Law of Obligations.

The meeting was adjourned at 9:15 o'clock.

The Chairman

(Signed) DR. MARTIN BLOCH

(Signed) DR. WYLER,

Acting Secretary

EXHIBIT M.

*Minutes of General Meeting of*

UEBERSEE FINANZ KORPORATION, A. G., ZURICH

held on June 1, 1932

Dr. Hanns Frankenberg, representing the President of the Board of Directors, took note of the regular notice issued, and ascertained representation of the entire stock capital.

Dr. J. Henggeler was appointed as acting Secretary.  
The only subject on the agenda was:

Establishment of the fact that the stock capital had been paid-in in full.

The chairman of the meeting established the fact, that according to a receipt of Adler & Co., A. G., in favor of the Corporation, the amount of Frs. 250,000, was paid into the said bank in satisfaction of the remaining 50% of the stock capital. The receipt referred to of Adler & Co., A. G., was presented and annexed in the original to the minutes.

The Corporation, supported thereby, established the fact of the full payment of the stock capital, and authorized and directed the Board of Directors, to notify the Register of Commerce, Zurich, of this resolution.

These resolutions were unanimously adopted.

(Signed) Dr. FRANKENBERG,  
Chairman

(Signed) Dr. HENGGLER,  
Acting Secretary

#### EXHIBIT N.

*Minutes of the Eleventh Regular General Meeting of*  
UEBERSEE FINANZ KORPORATION, A. G., ZURICH  
Tuesday, July 12, 1933, at 10:30 A. M.  
at the domicile of the Corporation,  
St. Peterstrasse 16, Zurich 1

There were present on their own behalf and as proxy for stockholders:

Dr. Eugen Meier, attorney-at-law, Liestal, President  
of the Board of Directors,

Dr. Hanns Frankenberg, Banker, Zurich 1, member of  
the Board of Directors,  
Mr. Adolf Gäng, certified accountant, Zurich 6.

The chairman took note that all stockholders were present or represented. The stock was presented for control. No stockholder was enabled to represent more than 20 votes.

The stockholders declared that the notice of call for the general meeting was issued in accordance with the by-laws and recognized by them as such.

The annual balance sheet and profit and loss account, and the comptroller's report were open to inspection by stockholders in the office of the Corporation on and after June 20th; in compliance with paragraph 8 of the by-laws.

Dr. Hanns Frankenberg was appointed acting secretary.

Mr. Adolf Gäng as teller of votes.

#### AGENDA

1. Presentation of annual report and of annual balance sheet and profit and loss account for the year 1932,
2. Report of Comptroller,
3. Release of the Board of Directors and Comptroller,
4. Election of the Board of Directors and Comptroller,
5. Various

1. *Presentation of annual report and of annual balance sheet and profit and loss account for the year 1932.*

There was written off from the holdings of Vermag, A. G. stock, due to losses in that company, 40% = Frs. 40,000—Profits made elsewhere were not sufficient to offset this loss.



## 2. *Report of Comptroller:*

The same reads:

"As Comptroller of Overseas Finance Corporation Ltd., Zurich, I hereby confirm that the accounts for the business year 1932 (Jan. 1, to December 31, 1932) were kept in proper order and that the balance sheet and profit and loss account as of December 31, 1932 were drawn up correctly.

There were vouchers for all entries, and the cash balance of Fres. 1,250.—as of December 31, 1932, respectively as of to-day, is at hand in currency. Balance Sheet and Profit and Loss account comply with the regulations of the O. R. (Unable to ascertain what this means—The Translator) and show for the year 1932 a loss of Fres. 3,197.39, which was carried forward to new account, thereby increasing the loss carried forward from the previous year of Fres. 21,855.11 to Fres. 25,052.50 as of January 1, 1933.

I recommend adoption of the accounts with release of those responsible.

Yours very truly

(signed) ADOLF GAENG"

## 3. *Release of the Board of Directors and Comptroller.*

The meeting unanimously resolved the adoption of the accounts and of the report of the Comptroller. Following this the Board of Directors and the Comptroller were given their release in separate votes which in each case were not participated in by those concerned.

## 4. *Election of Board of Directors and Comptroller.*

There were re-elected for a further term of one year:

to the Board of Directors:

Dr. Hanns Frankenberg, Banker, Zurich 1,

Dr. J. Henggeler, Attorney at Law, Zurich,

Dr. Eugen Meier do Liestal.

as Comptroller:

Mr. Adolf Gaeng, Expert Accountant, Zurich 6.

Adjournment of meeting 11:30 o'clock.

(signed) Dr. E. MEIER,  
Chairman

(signed) Dr. FRANKENBERG,  
Acting Secretary.

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EXHIBIT O.

*Minutes of the Twelfth General Meeting of*

UEBERSEE FINANZ KORPORATION, A. G., ZURICH

held on Friday, April 20, 1934, at 6:00 o'clock in the afternoon at the domicile of the Corporation, St. Peterstrasse 16, Zurich 1.

Present on their own behalf and as proxies for stockholders:

Dr. Eugene Meier, attorney-at-law, Liestal, President of the Board of Directors,

Dr. Hanns Frankenberg, Zurich, member of the Board of Directors,

Dr. J. Henggeler, attorney-at-law, Zurich 1, member of the Board of Directors,

Mr. Adolf Gäng, certified accountant, Zurich 6.

The chairman took note that all stockholders were present or represented. No stockholder was entitled to represent more than 20 votes. The stockholders declared, that the notice of call of the general meeting was expressly recognized by them as having been issued in accordance with the provisions of the By-Laws.

Dr. Frankenberg was designated acting secretary, Mr. Adolf Gäng teller of votes.

#### AGENDA

1. Presentation of annual report and of annual balance sheet and profit and loss account for the year 1933; report of the comptroller.
2. Adoption of annual accounts; release of Board of Directors and comptroller.
3. Election of Board of Directors and Comptroller.
4. Various.

1. *Presentation of annual report and annual balance sheet and profit and loss account for the year 1933, report of the comptroller.*

The balance sheet as of Dec. 31, 1933 made the following showing:

assets .....	frs. 940,912.05
liabilities .....	922,957.-
profit for 1933 .....	frs. 17,955.05

The profit for 1933 was set off against the loss carried forward from the previous year. The accounts were exam-



ined by the comptroller, Mr. Adolf Gäng, expert accountant, Zurich 6, who submitted the following report:

"The undersigned, comptroller of your Corporation, has examined the accounts of Overseas Finance Corporation, Ltd., Zurich, for the business year 1933 (January 1 to December 31, 1933) and the balance sheet with profit and loss statement as of December 31, 1933. The books and vouchers were properly kept. The cash balance of frs. 1,250. was on hand in currency. Assets and liabilities set up. Balance Sheet and Profit and Loss statement as of Dec. 31, 1933 were properly drawn up in accordance with regulations, and show a profit of frs. 17,555.05, thereby reducing the loss carried forward from the previous year from frs. 25,052.50 to frs. 7,097.45 as of January 1, 1934. I recommend adoption of the accounts and release of those responsible."

## 2. *Release of Board of Directors and Comptroller*

The meeting unanimously resolved to adopt the annual accounts. Following this and by separate votes the Board of Directors and the Comptroller were released, with those concerned in either case not voting.

## 3. *Election of the Board of Directors and of the Comptroller*

There were reelected for a further term of one year:

to the Board of Directors

Dr. Hanns Frankenberg, Banker, Zurich 1,

Dr. J. Henggeler, attorney-at-law, Zurich 1,

Dr. Eugen Meier, attorney-at-law, Liestal,

as Comptroller

Mr. Adolf Gäng, expert accountant, Zurich 6

Meeting was adjourned 6:30 o'clock.

for the correctness of the minutes

(signed) DR. FRANKENBERG, Acting Secretary

(signed) DR. E. MEIER, President

EXHIBIT P.

*Minutes of the Thirteenth Regular General Meeting of*

UEBERSEE FINANZ KÖRPORATION, A. G., ZÜRICH

at the domicile of the Corporation,  
St. Peterstrasse 16, Zürich 1

Thursday, April 11, 1935, at 3 P. M.

Present on their own behalf and as proxies for stockholders:

Dr. Eugen Meier, attorney-at-law, Liestal,  
President of the Board of Directors,  
with 20 shares,

Dr. Hanns Frankenberg, Zürich,  
member of the Board of Directors,  
with 30 shares,

Dr. J. Henggeler, attorney-at-law, Zürich 1,  
member of the Board of Directors,  
with 20 shares,

Mr. Adolph Gäng, certified accountant, Zürich 6,  
with 30 shares

The chairman took note, that all stockholders are present and represented. The stock was presented for control, no stockholder being entitled to represent more than 20 votes. The stockholders declared, that the notice of call of the general meeting was expressly recognized by them as having been issued in accordance with the provisions of the By-Laws.

The annual balance sheet and profit and loss account, as well as the comptroller's report were open to inspection by stockholders in the office of the Corporation on and after April 1st, in compliance with paragraph 8 of the By-Laws.

Dr. Frankenberg was designated acting secretary, and Mr. Adolph Gäng teller of votes.

#### AGENDA

1. Presentation of annual report, and annual balance sheet and profit and loss account for the year 1934; report of the comptroller,
2. Adoption of the annual accounts, release of the Board of Directors and Comptroller.
3. Election of the Board of Directors and Comptroller.
4. Various.

1. *Presentation of annual report and annual balance sheet and profit and loss account for the year 1934; report of Comptroller*

The balance sheet as of December 31, 1934, showed on both sides a total of frs. 7,118,275. The profit and loss account showed a net profit of frs. 8,834.30, which was applied against the loss of frs. 7,097.45 carried forward from the previous year; the balance of profit of frs. 1,736.85 was carried forward to new account.



The accounts were examined by the comptroller, Mr. Adolph Gäng, expert accountant, Zurich 6; he made a motion to adopt the accounts, with release of those responsible.

## 2. *Release of the Board of Directors and of the Comptroller*

The meeting unanimously resolved the adoption of the annual accounts. Following this, and by separate votes, release was given to the Board of Directors and to the Comptroller, with those concerned in either case not voting.

## 3. *Election of the Board of Directors and of the Comptroller*

There were reelected for a further term of one year:

to the Board of Directors

Dr. Hanns Frankenberg, Banker, Zurich 1,

Dr. J. Henggeler, attorney-at-law, Zurich 1,

Dr. Eugen Meier, attorney-at-law, Liestal  
as Comptroller,

Mr. Adolph Gäng, expert accountant, Zurich 6.

## 4. *Various*

(a) The President called attention to the fact, that according to the tenor of paragraph 2 of the By-Laws, the corporation must be placed under the banking law. To avoid this, the By-Laws would have to be changed, and in view of the status of the gold matter in the U.S.A., a change of By-Laws should, at the present moment, be abstained from.

∴ Application to the Banking Commission was to be made by the end of April with the declaration that as a

matter of fact no banking business was transacted, and the acceptance of deposits from the public was not solicited. Furthermore a conformable change of the By-Laws was intended to be made shortly.

(b) Remuneration of the members of the Board of Directors was agreed upon at frs. 1,000. each, to be charged to expense account.

Meeting was adjourned at 3:30 P. M.

for the correctness of the minutes

(Signed) DR. E. MEIER, PRESIDENT

(Signed) DR. FRANKENBERG, Acting Secretary

# MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR LICENSE

IN THE  
DEPARTMENT OF THE TREASURY,  
OF THE UNITED STATES OF AMERICA.

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In the Matter

of

The Application of UEBERSEE FINANZ-KORPORATION AKTIEN  
GESELLSCHAFT, regarding Gold held for its Account in the  
United States.

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STATEMENT.

Uebersee Finanz-Korporation A.G., a corporation under  
Swiss law, having its office and place of business in Zurich,

originally applied on Form TG-18 on or about May 9, 1934, for a license to transfer gold coin held for its account by Ladenburg Thalmann & Co., New York, to the Federal Reserve Bank of New York, to be held in custody for the Banque Nationale Suisse. The application was made on Form TG-18 and was verified by the President of Zurich in April, 1934.\*

After the making of this application, the matter remained under consideration of the Treasury for about a year. At the request of Federal Reserve Bank of New York some additional information was supplied on July 27, 1934, in the form of an affidavit verified by Friedrich Wille on that date regarding the nature and extent of the business done by Uebersee with Ladenburg Thalmann & Co., and in the form of a letter by Ladenburg Thalmann & Co. with attached documents on October 16, 1934. It appears also that the Treasury conferred with Mr. Theodore Hoffacker of Theodore Hoffacker & Co., New York, investment bankers, in Washington on July 19, 1934, and with Dr. Eugen Meier, President of the company, in Washington on April 29, 1935.

On May 4, 1935, the Treasury addressed a letter to the corporation denying its application and requiring delivery of the gold.

Thereupon on May 6, 1935, Dr. Meier as President of the corporation retained us to represent it with reference to the application, and a hearing was accorded us by the general counsel for the Treasury on May 15, 1935, at which we set forth briefly the facts with respect to Uebersee Finanz-Korporation A. G. and its assets as we had learned them from Dr. Meier and from Mr. Fritz von Opel,

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\* We do not have available to us a conformed copy of the application giving the exact date.



the controlling stockholder\*. Pursuant to permission kindly granted by the Treasury, we have communicated by cable with Zurich for the documents immediately available, and have assembled and are submitting in affidavit form these documents and the relevant facts bearing on the acquisition by the corporation of the gold here involved.

The present application concerns gold coins of the United States to the amount of \$1,250,000 held for the account of the applicant corporation by Ladenburg Thalmann & Co., 25 Broad Street, New York, N. Y. It is our understanding that, if the application on Form TG-18 be granted, the gold coins will be exchanged against bullion and the bullion transferred to the account of the Banque Nationale Suisse with Federal Reserve Bank of New York.

It is our belief that the underlying facts, here presented for the first time, fully support the claim of the corporation to title in the gold and to immunity from the American jurisdiction, and justify and require the granting of the application heretofore submitted in its behalf.

#### SUPPLEMENTARY PAPERS HEREWITH SUBMITTED.

The papers herewith submitted, on which this memorandum is based, are the following:

1. Affidavit of Dr. Eugen Meier, President of Uebersee Finanz-Korporation A. G., verified May 28, 1935.

2. Affidavit of Fritz von Opel, controlling stockholder, verified June 7, 1935.

3. Affidavit of Dr. Manfred Wronker-Flatow, former general counsel to Adam Opel A. G., verified June 6, 1935.

\* Mr. von Opel came to New York at our request from Jamaica, British West Indies, where he was spending a vacation on May 13, 1935, for the purpose of giving us information about the background and recent history of the company.

4. Affidavit of Friedrich Wille, chief<sup>e</sup> accountant of Landenburg Thalmann & Co., verified June 6, 1935.

5. Affidavit of Theodore Hoffacker, investment banker, verified June 6, 1935.

As exhibits to these affidavits there are submitted various documents bearing on the corporate history of Uebersee and on the history of its assets, notably the deed of gift from Wilhelm von Opel to Fritz von Opel dated October 5, 1931, Exhibit R.

#### ESSENTIAL QUESTION INVOLVED.

The essential question involved in this application, as we understand it, is whether the owner of the gold is subject to the jurisdiction of the United States:

The Act of March 9, 1933, amending subdivision (b) of Section 5 of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, empowers the President to

"prohibit \* \* \* hoarding of gold or silver coin or bullion or currency by *any person within the United States* or any place subject to the jurisdiction thereof \* \* \*"

The same conception of jurisdiction *in personam* runs through the remainder of the Act of March 9, 1933, including the amendment to Section 11 of the Federal Reserve Act which empowers the Secretary of the Treasury to require

"any or all individuals, partnerships, associations and corporations"

to pay and deliver any or all gold coin, etc., owned by such individuals, partnerships, associations and corporations.

In strict conformity with the jurisdictional limitations thus recognized, the executive order of the Secretary of the

Treasury dated December 28, 1933, referring to the amendment of the Federal Reserve Act by the Act of March 9, 1933, requires

"every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion and gold certificates situated in the United States, owned by such person."

The jurisdictional restriction laid down in the Anti-Hoarding Act was pointed out on May 25, 1933, when the Attorney General, in rendering his opinion to the Secretary of the Treasury, said:

"The Executive Order [of April 5, 1933] theretofore operates *in personam*, not *in rem*, upon the persons designated in the order rather than upon the gold required to be delivered by the order. \* \* \* The order \* \* \* is plainly applicable to all persons, corporations, partnerships, and associations who are present within the Continent of the United States \* \* \*"

There is every reason to suppose that the legislation and the Executive Orders governing this application were drawn advisedly so as to exclude from their scope gold within the United States owned by persons not subject to the jurisdiction for the double purpose no doubt of respecting the restraints commonly accepted by civilized powers\* and of avoiding the claims to compensation of

\* Holmes, J., in *Direction der Disconto-Gesellschaft v. U. S. Steel Corporation*, 267 U. S. 22, 28: "Taking the United States in this connection to mean the total powers of the Central and the State Governments, no doubt theoretically it could draw a line of fire around its boundaries and recognize nothing concerning the corporation or any interest in it that happened outside. But it prefers to consider itself civilized and to act accordingly."



non-resident alien owners whose national currency had not undergone devaluation.

POSITION OF THE TREASURY AND POSITION OF APPLICANT.

We assume that the Treasury, in originally denying the application, had come to the conclusion from its own investigations that the owner of the gold could not be held to be exempt from the jurisdiction of the United States, either because Uebersee Finanz-Korporation A. G. had subjected itself to the jurisdiction by performing acts or employing agents within the United States which constituted a technical doing of business here, or because Fritz von Opel as the controlling stockholder was to be deemed the real owner of the gold and had subjected himself to the jurisdiction by transient visits here after May 1, 1933.

From the most thorough investigation of the facts which we have been able to make since our retainer on May 6th, we feel that neither of these conclusions is true, and that a fair construction of the applicable legislation and Executive Orders would require that the gold be treated as exempt from the jurisdiction and the application be granted. In particular we wish to point out in the following discussion:

1. That Uebersee Finanz-Korporation A. G. is a real corporate entity, with a record of a small but substantial business as investment banker from its incorporation in Switzerland in 1922.

2. That the office and place of business of the corporation has always been in Zurich, Switzerland, and at no time has it had a resident agent or representative in the United States.

3. That it has never "done business" in the United States in the sense required by the authorities for a finding of its presence here.

4. That Fritz von Opel, after he became the controlling stockholder in or about January, 1932, has respected the corporate forms in the operation of the company's business.
5. That the present assets of the corporation in the United States, including the gold here involved, are the proceeds of a transaction in Opel Motors Works stock by virtue of which a separate estate *in rem*, designated a usufruct under German law, was reserved to the father and mother of Fritz von Opel, Wilhelm and Marta von Opel.
6. That this right of usufruct attaches to the shares of Uebersee Finanz-Korporation A. G. and to the gold here involved.
7. That Wilhelm and Marta von Opel have not subjected themselves to the jurisdiction of the United States.
8. That the reservation to them of the usufruct in the shares of the corporation and in the gold is under German law a reservation of the beneficial use and enjoyment such as to prevent Fritz von Opel from being the "owner" of either the shares or the gold within the meaning of the statute and the Executive Orders.

#### SUMMARY OF FACTS.

For the consideration of the legal principles involved it may be appropriate to summarize here the facts which are set forth more at large in the affidavits and the exhibits thereto.

Uebersee Finanz-Korporation A. G. was organized in 1922 as an investment company under the law of the Confederation of Switzerland, and was entered on June 3, 1922, on the Commercial Register of the Canton of Zurich, thereby becoming a juridical person in Swiss law. It had an authorized capital of 500,000 Swiss francs, divided into 100

bearer shares of 5,000 francs par value each, of which 250,000 Swiss francs were paid in upon organization. The charter (Maier Exhibit B) provided for a board of one to five directors to be elected by the stockholders. In practice, one director managed the corporation.

So far as we know, and so far as is disclosed by the minutes of stockholders meetings, attached to Dr. Meier's affidavit as Exhibits C to P, the von Opel family had nothing to do with Uebersee during the first nine years of its existence; and the affidavit of Fritz von Opel shows that the von Opel connection with Uebersee began on April 27, 1931, when he negotiated with Adler & Co. A. G., Swiss banking corporation, a contract giving him an option to buy and Adler & Co. A. G. an option to sell all or substantially all the stock of Uebersee.

During this first period of its existence prior to the connection of the von Opels with it, Uebersee maintained (1923-28) an account in New York with the firm of Ladenburg Thalmann & Co. in New York, which seems to have been active and substantial, as set forth in the second affidavit of Friedrich Wille herewith submitted. Mr. Wille, having had charge of the books of account of Ladenburg Thalmann & Co. since 1920, was familiar with the account at the time.

At the time Fritz von Opel acquired an interest in Uebersee, namely April, 1931, he was in the employ of General Motors Export Corporation at Antwerp. He was a mechanical engineer, and had previously, during the period 1923-29, been employed in the family business, an important German automobile plant at Ruesselsheim-am-Main, Hesse, Germany, first known as Adam Opel Motor Works and incorporated in 1928 as Adam Opel A. G. Fritz von Opel became general manager of the corporation in 1928. The vital importance of Adam Opel A. G. to the present application is that the gold here involved is part of the proceeds of a transaction in the shares of that company, which transaction by a deed of gift executed on



October 5, 1931, made the shares and their proceeds into a von Opel family trust and which it was contemplated would be and was in fact over into Uebersee.

By a transaction negotiated in 1928 and consummated in 1929, General Motors Corporation acquired all the outstanding stock of Adam Opel A. G. amounting to 6,000 shares of 10,000 Reichsmarks par value each. By a separate transaction in the form of an escrow agreement dated April 11, 1929 (von Opel, Exhibit Q), Wilhelm von Opel (father of Fritz von Opel) and General Motors Corporation made the National City Bank of New York an escrow agent with respect to 600 shares of Adam Opel A. G. stock belonging to Wilhelm von Opel, and agreed that General Motors Corporation was to have an option thereon to sell, and Wilhelm von Opel an option to buy up to April 1, 1934, at a graduated price in Reichsmarks varying from 23,000 to 30,000 Reichsmarks a share according to the party exercising the option and the date of its exercise.

Some plan apparently being afoot to keep the von Opels interested in the management of their former Ruesselsheim plant under General Motors ownership, Fritz von Opel went to the United States at the end of 1929 and remained approximately a year in the employ of General Motors Corporation (Chevrolet Division) at various plants, where he obtained some practical acquaintance with American manufacturing methods. At the end of 1930 he returned to Europe and went into the employ of General Motors Export Corporation at Antwerp, where he remained until September or October, 1931. It was during this period (April 27, 1931) that he entered into the option-agreement with Adler & Co. A. G. for the acquisition of Uebersee Finanz-Korporation A. G. (von Opel, pp. 9-10). These negotiations were had with Dr. Frankenberg, an old acquaintance of Wilhelm von Opel, who was then living in Zurich and was general manager of Adler & Co. A. G. Fritz von Opel's idea in contracting in April, 1931, for the

acquisition of this stock was to use the company for the purpose of developing and marketing patents which he held (von Opel p. 9). He did not at that time have in mind transferring to Uebersee any Adam Opel A. G. shares or proceeds thereof, because he had as yet no knowledge even of the existence of the escrow agreement, Exhibit Q (von Opel pp. 2-4), although he did know about the general transactions between General Motors Corporation and the von Opel family.

In the fall of 1931, after some discussion of the possible future of Fritz von Opel in the Opel Motor Works under General Motors Corporation ownership, his parents gave him by deed of gift dated October 5, 1931 (von Opel Exhibit R) the 10% of Adam Opel A. G. stock having a par value of 6,000,000 Reichsmarks covered by the escrow agreement Exhibit Q. It was then that Fritz von Opel learned the terms of the escrow agreement.

This deed of gift Exhibit R was drawn by Dr. Manfred Wronker-Flatow, then general counsel to Adam Opel A. G., now residing in New York City. Its execution is described by Dr. Wronker-Flatow in his affidavit (p. 2) as well as by Fritz von Opel (pp. 3-4). As the deed of gift is fundamental to an understanding of the present rights in the gold involved on this application, we set it out in full (Exhibit R):

"Russelsheim, Oct. 5, 1931.

"I, the undersigned Geheimer Kommerzienrat Dr. ing. e.h. Wilhelm von Opel live with my wife Marta, née Bade, under community property agreement. Included in this property are shares of stock Nos. 1 to 600 of the Adam Opel Stock Co. in Russelsheim o/Main of the par value of R.M. 6,000,000 (six million). It is our common desire that these shares remain in possession of the male line of descent of our family, so that

the bearers of the name of Opel may remain in living connection with the work of our father Adam Opel.

Accordingly, I, with the consent of my wife, do hereby give out of our common property to our son Fritz von Opel the aforementioned shares of stock of the Adam Opel Stock Co. in Russelsheim on/Main Nos. 1 to 600 of the par value of R.M. 6,000,000 (six million). These shares are at present lodged with the bank.

I, the co-signor Fritz von Opel, do hereby accept this gift.

I, Wilhelm von Opel, hereby transfer ownership of these shares of stock to our son Fritz von Opel by relinquishment of our claim to the delivery of these shares.

The usufruct of these shares is not transferred to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereinafter referred to as the parents Opel until the death of the survivor of them. However, twenty per cent, of all dividends and interest accruing from these shares are to go to Fritz von Opel.

In the event that the parents Opel should die before Fritz von Opel, the latter must effect a settlement of the aforesaid gift with his sister, Mr. Elinor Sachs, née von Opel, or, in case she should predecease him, with her issue.

For the purpose of this settlement, the shares of stock are to be valued at the market price of the time of the settlement. Should the market value be higher than the present value, the higher value is to be used, if lower, then the lower value.

In case the parents Opel should not have drawn the income from these shares, under their usufruct rights, or not have drawn the entire amount of this income, then the settlement to be made by Fritz von Opel is to be increased by the amount of the income not drawn.

In the event that these shares should be sold or ex-



changed for other securities, then the proceeds of such sale or the securities received in exchange are to take the place of the said shares, subject to the rights and safeguarding of usufruct of the parents Opel.

In the event that Fritz von Opel should predecease his parents without leaving legitimate issue, then the gift effected by these presents shall become null and void. The aforesaid shares or their exchange value, plus the unused income accrued therefrom, shall then revert to the parents Opel or to the survivor of them.

(Signed) DR. WILHELM VON OPEL

(Signed) FRITZ VON OPEL

I, the wife, Marta von Opel, née Bade, do hereby consent to the above agreement.

(Signed) MARTA VON OPEL, née Bade

By this instrument Wilhelm von Opel transferred to Fritz von Opel legal title to the 6,000,000 Reichsmarks par value Adam Opel A. G. stock, but did not transfer the usufruct in the stock; directed Fritz von Opel to effect a settlement with his sister on certain contingencies; and provided that the rights of the parents von Opel as usufructuaries should attach to the proceeds upon any sale or exchange of the stock. Under German law as explained by Dr. Wrönker-Flatow, and under Swiss law, as explained by Dr. Meier, the right of usufruct constitutes a right *in rem*, and the retention of the usufruct by the grantors under the deed of gift effected a partition of ownership such that Fritz von Opel, although holder of legal title, was deprived of the beneficial enjoyment of the gift during the lifetime of his parents. The only income which during their lifetime he was to receive was a grant out of the

reserved usufruct of 20% of dividends and interest on the shares or their proceeds. The reservation of the usufruct was particularly insisted upon by Wilhelm von Opel, as a condition of the gift (Wronker-Flatow p. 2, von Opel p. 4).

Fritz von Opel agreed orally to transfer the shares so given him or their proceeds to a corporation whose stock would be held in such a manner as to safeguard the interests created by the deed of gift. The option contract with reference to the Usbersee stock had not yet been exercised either by him or by Adler & Co. A. G. In order to avert a loss on the Adam Opel A. G. shares through depreciation of the mark, Fritz von Opel went to New York in October, 1931, and endeavored to negotiate a change in the escrow agreement Exhibit Q so that the Reichsmarks payable thereunder might be paid on a gold or gold equivalent basis. This effort failed. Thereupon, using a power of attorney from his father, Fritz von Opel exercised the option provided by the escrow agreement by written notice to General Motors Corporation dated October 17, 1931 (Exhibit S-1), caused the shares of Adam Opel A. G. to be delivered to General Motors Corporation, and received in an account in his name with City Bank Farmers Trust Company in New York the purchase price of the shares, partly in cash and partly in General Motors Corporation common stock. The General Motors Corporation common stock to the number of 47,625 shares was credited on the purchase price at \$24 per share making a total of \$1,143,000; while the balance of \$2,594,748.64 computed at the average cable rate of exchange between marks and dollars in New York was paid in cash from November 17th to November 24, 1931, to the credit (ultimately) of Fritz von Opel's account at City Bank Farmers Trust Company. Inasmuch as the escrow agreement called for 26,500 Reichsmarks a share at the time the option was exercised (Exhibit Q, Item 5), the total purchase price paid by General Motors Corporation

to Wilhelm and Fritz von Opel for the 600 shares of Adam Opel A. G. was R.M. 15,900,000. The dollar values aggregating \$3,737,742.64 accepted in satisfaction of this mark obligation give a rate of exchange of \$0.23508 to the mark (von Opel pp. 6-7).\*

On October 28, 1931, Fritz von Opel received from City Bank Farmers Trust Company a form of authorization for corporate signatures, having then in mind the transfer of the entire amount of cash and securities realized under the escrow agreement to Uebersee Finanz-Korporation A. G. (von Opel p. 8). He left New York early in November, 1931, and reached Russelsheim before the first payment (November 17, 1931) from General Motors Corporation was due. He discussed with Wilhelm von Opel the decision that had been made in New York and argued for the desirability

"of having the investment represented by such [escrow] agreement in more or less liquid form for conversion into stable forms of value which would protect the investment against the destructive effects of a monetary inflation."

At that time, of course, Fritz von Opel anticipated devaluation of the mark, not of the dollar. His father had been willing to retain the escrow agreement with modifications, including a lengthening of the term to five years, and to accept a gold conversion value for the Reichsmarks up to 50% only. Fritz von Opel convinced him, however, that the

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\* This gave the von Opels a mark equivalent for their dollar investment of more than 4 marks to the dollar. The cable rate of exchange in New York for marks on June 6, 1935, was 40.63. This increased valuation of the marks, reflecting the devaluation of the dollar, allows the von Opels only 2.5 marks to the dollar on such of the American assets as are realized on a dollar for dollar basis.



immediate conversion of the escrow agreement into cash was preferable for the reason stated; and it was this underlying policy of endeavoring to protect themselves against the consequences of monetary inflation which, manifested as far back as October, 1931, influenced Fritz von Opel in February, 1933 (together with contemplated commitments for the investment program of Uebersee) to convert a large proportion of the American holdings of Uebersee into gold. It must be remembered that, had the von Opels waited until April 1, 1934, to exercise the option conferred by the escrow agreement Exhibit Q, they would not only have realized a higher price per share in Reichsmarks but have received payment in a currency which, nominally at least, has retained its old relationship to the dollar.

After the return of Fritz von Opel to Europe this option on Uebersee stock, which would have expired December 31, 1931, was exercised, and he became the owner of 97 out of the 100 shares, 3 shares being retained by or reserved for the three directors. On these shares only 250,000 Swiss francs had been paid in. Through a credit with Alder & Co. A. G., Fritz von Opel arranged for the payment of the 50,000 Swiss francs theretofore paid in, as the purchase price, and a further 250,000 Swiss francs as the balance of the capital (von Opel pp. 11-12); but the only cash payment made by him in exchange for the Uebersee stock was 59,500 Swiss francs or \$11,604, charged to his account with the Swiss Credit Anstalt, Zurich, on February 24, 1932, out of the proceeds of a remittance which Fritz von Opel made from his City Bank Farmers Trust Company account on December 1, 1931 (pp. 10-11). In other words, the entire cash consideration for the Uebersee stock was paid by Mr. von Opel out of the proceeds of the escrow agreement Exhibit Q, so that the shares of Uebersee thus acquired became as proceeds of

the Opel stock subject to the terms of the deed of gift Exhibit R.

Upon the purchase of this Uebersee stock, Fritz von Opel agreed with his father (pp. 12-13) that this company should become a vehicle for the holding and investment of the proceeds of the Opel stock, and at Wilhelm von Opel's request Dr. Frankenberg, managing director of Adler & Co. A. G., was made managing director of Uebersee Finanz-Korporation A. G. (von Opel p. 13; see Exhibit L, minutes of May 6, 1932). Fritz von Opel stated to Dr. Frankenberg his intention of going to New York for the purpose of turning over the securities held for his account there to Uebersee, and they discussed an increase of capital stock of the company to be issued against this transfer.

On the occasion of business for which his father called him to New York in May, 1932, in connection with General Motors Corporation, Fritz von Opel transferred to the account of Uebersee Finanz-Korporation A. G. with City Bank Farmers Trust Company out of his own account securities having a total par value of \$2,339,000 and cash amounting to \$239,115.46 (von Opel p. 15). This transfer took place about June 1, 1932, as is evidenced by correspondence (von Opel Exhibits X and Y). The 47,625 shares of General Motors Corporation common stock were retained for the purposes of current trading, were converted into other securities, which were ultimately for-

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\* In fact we understand that a further \$100,000 out of the proceeds of the Opel stock subsequently transferred (June, 1932) to the account of Uebersee in New York was earmarked by Fritz von Opel for capital account, and thus constituted the basis for the book entries in Zurich whereby the Swiss franc equivalent or Sw. Fr. 515,517 was passed to the discharge of von Opel's debt to Adler & Co. A. G.; but, as this was merely a matter of bookkeeping, it is not detailed in the affidavit of Fritz von Opel, and is here mentioned merely to emphasize that the entire consideration for the Uebersee stock was paid out of the proceeds of the Opel stock, as Mr. von Opel says (p. 12).

warded to Uebersee at Zurich, and do not figure upon this application.

The cash and securities so transferred to Uebersee Finanz-Korporation A. G. upon the books of City Farmers Trust Company constituted the entire or practically the entire proceeds of the Opel stock previously sold by Fritz von Opel to General Motors Corporation in accordance with the escrow agreement Exhibit Q. The cash received on that sale had in the interim been invested in securities. For the purpose of the transfer Mr. von Opel had first a power of attorney from Uebersee signed by Dr. Martin Bloch, then secretary of the company, on January 15, 1932 (von Opel p. 13, Exhibit U), and subsequently a power of attorney signed by Dr. Henggeler and Dr. Frankenberg as directors on May 9, 1932 (Exhibit W).

Fritz von Opel left New York for Europe on June 5, 1932. He retained his power of attorney on behalf of Uebersee, and kept in touch by cable with Theodore Hoffacker in New York with regard to investments to be made of the funds of the company, on which subject he also consulted with Dr. Frankenberg frequently (von Opel p. 16). Mr. Hoffacker he had met in October, 1931, and had entered into a written arrangement with him for trading in the 47,625 shares of General Motors Corporation stock (von Opel Exhibit V). Mr. Hoffacker had no relationship with Uebersee, however, except through Fritz von Opel, to whom he acted as investment counsel for von Opel's personal investments and for such as he made as attorney-in-fact for Uebersee (Hoffacker pp. 2-3).

Beginning in June or July, 1932, the funds of Uebersee were invested in two different fields. The first was brewing, represented by the company's purchase of the stock of Harvard Brewing Company.\* The second field of invest-

\* The affidavits do not go into this purchase or generally into the details of Uebersee's investments in the United States, but a memorandum thereon was submitted to the Treasury by Mr. Hoffacker in August, 1934.



ment was oil. This investment began with the acquisition of the stock of Spur Distributing Company, Inc., a Delaware corporation operating a gasoline distributing system (von Opel, p. 16). Engineering studies indicated that Spur would require support in the form of crude oil reserves and a refinery and Fritz von Opel its attorney in fact for Uebersee directed the sale of a substantial quantity of its bonds held in New York for the purpose of accumulating funds for additional oil purchases (von Opel pp. 16-17). Von Opel in his affidavit details the investments which he had under consideration during a visit to New York in November, 1932, and which contemplated expenditures of \$1,000,000 in stock of a new company, of \$1,500,000 (present cash outlay) for oil acreage, and of a possible 6,000,000 Reichsmarks for Adam Opel A. G. stock (von Opel pp. 17-19).

For these purposes Uebersee had accumulated cash by sales of its bonds in New York amounting to some \$1,300,000 (von Opel p. 17). The banking holiday in Michigan in February, 1933, and the spread of moratoria thereafter, made Fritz von Opel frankly fearful that the funds of Uebersee in New York would be tied up indefinitely through a closing of banks. Fritz von Opel was told by Dr. Frankenberg to convert the cash holdings of the company into gold or foreign exchange. On February 26, 1933, he cabled City Bank Farmers Trust Company to purchase for account of Uebersee \$1,250,000 in gold. This gold was purchased, and on March 3, 1933, transferred to Ladenburg Thalmann & Co., with which Uebersee had originally had its account.

The gold being immobilized by the closing of the bank and the subsequent gold legislation, Uebersee acting through Fritz von Opel sold some \$900,000 additional bonds in New York in March, 1933 (von Opel pp. 20-21), transferred part of this money to Switzerland on March 16, 1933, and in September, 1933, purchased dollars for the

purpose of the investments for which the gold had been accumulated.

This is the present position, the gold being still held by Ladenburg Thalmann & Co.

The 97 bearer shares of Uebersee Finanz-Korporation A. G. held by Fritz von Opel are on deposit with a bank in Zurich, Switzerland, under the control of Dr. Frankenberg as agent for Wilhelm von Opel, for the purpose of safeguarding the usufruct reserved in the deed of gift Exhibit R (von Opel pp. 22-23). These shares are also pledged with Adler & Co. A. G. for an obligation in which Wilhelm von Opel is interested (p. 23).

Fritz von Opel's parents and his sister, whose rights in the Uebersee stock and through such stock in such of the company's assets as are proceeds of the Opel stock, are all living, are citizens and residents of Germany, and have not been in the United States since June, 1932, at latest (von Opel p. 23).

#### APPLICATION FOR EXPORT LICENSE.

Prior to the present application Ladenburg Thalmann & Co. on May 22, 1933, formally applied on behalf of Uebersee for a license to export the gold here involved. This application was denied by the Acting Secretary of the Treasury, Mr. Acheson, by letter dated July 6, 1933, pointing out that Uebersee had not brought itself within the terms of the Executive Order of April 20, 1933; that the Treasury assumed that the owners of the gold were not subject to the jurisdiction of the United States; and that upon this assumption

"they are not required by said Executive Order to deliver the gold owned by them even though it may be situated within the United States."

## POINT I.

UEBERSEE FINANZ-KORPORATION A. G. AS OWNER OF THE GOLD IS NOT PRESENT WITHIN THE JURISDICTION THROUGH AN AGENT OR THROUGH DOING BUSINESS OR OTHERWISE.

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## POINT II.

THIS IS NOT A CASE FOR DISREGARD OF THE CORPORATE ENTITY BY REASON OF DOMINANCE OF A SOLE STOCKHOLDER.

. . . . .

## POINT III.

INDEPENDENTLY OF ANY QUESTION AS TO THE CORPORATE ENTITY NO "OWNER" OF THE GOLD HERE INVOLVED IS SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

For the reasons stated, we feel confident that any court would hold that Uebersee Finanz-Korporation A. G. as owner of the gold here involved, not only has not subjected

\* We have not separately discussed the question whether the corporation does own the gold. We do not believe there can be any question about the fact. It will be noted that the gold was purchased for Uebersee's account by City Bank Farmers Trust Company acting upon orders of Fritz von Opel as attorney-in-fact, cabled from Europe on February 26, 1933, and that it is now held for Uebersee's account by Ladenburg Thalmann & Co. The assets out of which the gold was purchased were made the property of Uebersee by the unilateral transfer effected on the books of City Bank Farmers Trust Company or Instructions of von Opel on June 1, 1932 (von Opel, pp. 14-15, Exhibits X and Y). The absence of any corporate obligation or evidence of indebtedness in exchange for the transfer is due to the fact that von Opel and Frankenberg contemplated a new stock issue (von Opel p. 13). (Action to this end has presumably been stayed by the difficulty about the gold; compare Exhibit P, minutes of April 11, 1935.) We are informed by Bayer and Clausen, accountants who have prepared Uebersee's income tax returns in this country for the years 1932 and following, that they based their return for 1932 upon figures supplied by City Bank Farmers Trust Company which were based upon Uebersee's ownership of the securities and cash transferred on June 1, 1932.



itself to the jurisdiction of the United States, but in its capacity as owner of the gold is entirely independent and distant from Fritz von Opel as stockholder. Fritz von Opel has been present in the United States at intervals since May 1, 1933, but the corporation has not.

Nevertheless the present application does not necessarily turn on the recognition of Uebersee's independent juridical existence, clear as we believe that to be. Ignoring the corporation for the moment and looking solely at the individuals interested in the gold, we find that Fritz von Opel is not an "owner" of the gold within the meaning of the Act of March 9, 1933, and the subsequent Executive Orders, because of the outstanding beneficial interest in Wilhelm and Marta von Opel who have not subjected themselves to the jurisdiction of the United States (von Opel, p. 23). The beneficial interest reserved to the parents von Opel constitutes what is known in German law as usufruct. As expressed in the deed of gift, Ex. R:

"The usufruct of these shares is not transferred to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereinafter referred to as the parents Opel, until the death of the survivor of them. However, 20% of all dividends and interest accruing from these shares are to go to Fritz von Opel.

"In the event that these shares should be sold or exchanged for other securities, then the proceeds of such sale or the securities received in exchange are to take the place of the said shares, subject to the rights of usufruct of the parents Opel."

While the estate of usufruct is not known to our law, it is firmly established in German and Swiss law which derive it from the Roman law. Usufruct is mentioned in

Gaius, Book II, Section 14. In the sixth century the codifiers of Justinian erected it into a separate title of the Institutes, Book II, Title IV:

"Usufruct is the right of *using and taking the fruits* of property not one's own, without impairing the substance of that property; \* \* \* Usufruct is thus a right *detached from the aggregate of rights involved in ownership*, and this separation can be effected in very many ways; for instance, if one man gives another a usufruct by legacy, the legatee has the usufruct, while the heir has merely the bare ownership [*nudam proprietatem*]; and, conversely, if a man gives a legacy of an estate, reserving the usufruct, the usufruct belongs to the heir, while only the bare ownership is vested in the legatee. Similarly, he can give to one man a legacy of the usufruct, to another one of the estate, subject to the other's usufruct."

Thus usufruct on the Continent of Europe has been from ancient times a right *in rem*, which, when separated from the naked title or "bare ownership", divested the title holder of the right of use and enjoyment. In Roman law the usufructuary could even transfer the usufruct by gift or sale, and the transferee took a right *in rem* which could be enforced by the praetor's edict.

In Swiss and in German law this conception seems to have been fully realized. Dr. Meier, a member of the Swiss Bar, says:

"In Swiss law property charged with a usufruct is regarded as composed of two rights *in rem* (*droits reels dingliches recht*), the one consisting of the usufruct belonging to the usufructuary and the other consisting of the naked property in the thing belonging

to the proprietor. In Swiss law, a division of ownership in the thing is effected if the ownership of the usufruct is separate from the naked title. The right of usufruct is defined by the Swiss Civil Code §§745 and following."

Dr. Wronker-Flatow, a member of the German Bar and the draftsman of the deed of gift which created the usufruct describes fully the concept in German law (pp. 2-4), and quotes the relevant provisions of the German Civil Code. Section 1036 provides that the usufructuary is entitled to possession:

"§1036. The usufructuary is entitled to the possession of the thing. In exercising the right of usufruct he must maintain the existing economic function of the thing and adhere to the rules of orderly management [ordnungsmaessiger wirtschaft]."

Sections 1081-1083 define the respective rights and duties of the usufruct and the holder of legal title, and show that where a bearer security or instrument drawn to order is the subject of a usufruct, the usufructuary and the title holder have particular obligations of cooperation; the usufructuary is entitled to possession of the interest dividend or profit participation coupon and may even require the instrument to be deposited with the Reichsbank. Usufruct is defined as the right to draw the fruits of the object (§1030) i. e., the right of beneficial use and enjoyment.

Dr. Wronker-Flatow also expresses the opinion, under the German law and the terms of the deed of gift Exhibit R, that if with the proceeds of the Opel stock Fritz von Opel purchased the Uebersee stock, the rights of usufruct would attach to that stock in the same manner as if it were described in the deed itself. On the assumption that with proceeds of the Opel stock there was directly purchased



the gold here involved, Dr. Wronker Flatow expresses the opinion that under German law the right of usufruct would attach to the gold in the same manner as if the gold had been described in the deed of gift.

Hence even if the corporate entity were in this case to be merged with the principal stockholder, and the gold to be regarded as held by the corporation (for whom it was purchased on February 27, 1933) for Mr. Fritz von Opel, the fact that it was purchased with funds which were proceeds of the Opel stock described in the deed of gift, would cause the reserved usufruct to attach directly to the gold. This means, of course, that the entire beneficial enjoyment of the gold would inhere in Wilhelm and Marta von Opel, non-resident aliens not subject to the jurisdiction, while (the Uebersee apart) only a naked legal title analogous to trust or custody would remain in Fritz von Opel.\*

Under these circumstances, we would suggest that the gold here involved falls within the opinion rendered by the Attorney-General to the Secretary of the Treasury under date of May 25, 1933. Pointing out that the Executive Order of April 5, 1933, is applicable by its terms only to the "owners" of gold, the Attorney-General says:

"Such language does not include a bare custodian, and accordingly those who within the continental United States hold gold in custody for non-resident alien owners are not required to comply with its terms by surrendering the gold thus held.

For like reasons I am of the opinion that those who hold gold in trust for non-resident alien owners are not required to comply with the terms of the Order. The word 'owner' is a comprehensive term and its pre-

\* The 20% of dividends and interest granted Fritz von Opel out of the usufruct by the deed of gift is a grant out of the reserved estate, proceeds from the usufructuary, and does not give Fritz von Opel any part of the beneficial use and enjoyment.

cise meaning varies according to the context in which it is used and the subject matter involved. *Hyde v. Shine*, 199 U. S. 62, 82; *Glover v. United States*, 164 U. S. 294, 297; *Coombs v. People*, 198 Ill. 586, 588; *Guild v. Prentis*, 83 Vt. 212, 214, 215. No doubt the literal meaning of the word is broad enough to include a trustee or one who holds merely a bare legal title (see *Board of Hudson River Regulating District v. Fonda J. & G. R. Co.*, 249 N. Y. 445; *People v. Village of Lombard*, 319 Ill. 56), but ordinarily the word 'owner' is used to indicate a person in whom an interest is vested for his own benefit, or one who has dominion over and the right to enjoyment of the thing in question. As the Supreme Court said in *Hyde v. Shine*, 199 U. S. 62, 82, *supra*, the word 'implies something more than a bare legal title.' (See *United States v. Ninety-nine Diamonds*, 139 Fed. 961, 971 (C. C. A. 8th); *In re Fulham's Estate*, 96 Vt. 308, 317-318; *In re Smithfield City*, 70 Utah 564, 567-568; *Chicago v. Sullivan Machinery Co.*, 269 Ill. 58, 69-70; *Stone v. New England Box Co.*, 216 Mass. 8, 10-11, see also Restatement of the law of Trusts, tentative draft No. 1, section 2(d). In this sense of the word 'owners' the Executive Order would have no application to one who merely holds the bare title to gold in trust for another.

The use throughout the Order of the words 'own', 'ownership', 'owner', and 'belonging', seems clearly to negative an intention that the Order should be applicable to a mere holder, possessor, or custodian of gold, or to one who holds only the bare legal title to gold without any right of enjoyment thereof."

The authorities cited by the Attorney General for this conclusion fully support him. Thus the Supreme Court says in *Hyde v. Shine*, 199 U. S. 62, 82:

"Although the word owner has a variety of meanings and may, under certain circumstances, include an equitable as well as a legal ownership, or even a right of present use and possession, it implies something more than a bare legal title . . ."

Looked at in its substance, therefore, and without regard for the intervention in 1932 of Uebersee Finanz-Korporation A. G., the transaction which underlay the acquisition of the gold involved reserved the beneficial use and enjoyment of the assets out of which the gold was purchased to persons who have been continuously and still are exempt from the jurisdiction, and we submit that it would be in accordance with the letter as well as the spirit of the law and the intention of Congress to avoid interference with genuine foreign interests, for the Treasury to find that the owners of the gold are not affected by the Act of March 9, 1933, and the subsequent Executive Orders.

#### CONCLUSION.

We have assembled as carefully as possible in the available time the facts bearing upon the ownership of the gold covered by this application, and have discussed as fully as possible the question which we surmised have been in the mind of the Treasury with respect to that ownership. As a result of our investigation we are convinced that the present case genuinely falls outside the jurisdiction of the United States according to the enlightened manner in which that jurisdiction has been asserted by the Congress and the Executive.

If, however, matters remain which seem to the Treasury to deserve inquiry or demand explanation, we should be glad to co-operate in either respect or in both. The applicant rests this application only on the facts, and we feel that it is entitled under the law and the facts to have the application granted.



The fact, of course, cannot be ignored that, in view of the devaluation of the dollar, the result of the granting of the application may be represented as being, and may appear to the Treasury to be, a profit to the corporation as measured in dollars. A moment's thought will show how deceptive any such representation or such appearance would be. The books of the corporation are kept in Swiss francs, not in dollars. The investment now owned by the corporation was originally computed in Reichsmarks, not in dollars. Ever since the execution of the deed of gift on October 5, 1931, it has been the candid endeavor of the von Opels to reduce the cash the consideration called for by the escrow agreement, Exhibit Q, and translate that cash into stable values which would at least maintain the gold value of the Reichsmark at the termination of the escrow agreement on April 1, 1934.

Whether we look at the transaction from the standpoint of Uebersee's accountancy in Swiss francs, or from the standpoint of the original investment of Reichsmarks, or from the standpoint of April 1, 1934, and the gold value of the Reichsmark on that date, it is equally plain that the granting of the application does not represent a profit. That it would produce an increment of dollars is beside the point, for it shows only that the dollar has been depreciated. In the currency of origin (Germany) and in the currency of adoption (Switzerland) the granting of the application is absolutely necessary to avoid a loss.

We do not believe that anything in the history of the transaction, as frankly detailed in Fritz von Opel's affidavit suggests that any American public interest would be injured by the granting of the application to which the applicant is in law entitled.

The application should be granted, and Uebersee Finanz-Korporation A. G. authorized to deliver the gold coins to the Federal Reserve Bank of New York for exchange against gold bullion to an equivalent amount and to sur-

render the bullion to the Federal Reserve Bank for the account of the Banque Nationale Suisse.

Dated, New York, N. Y., June 8, 1935.

Respectfully submitted,

DAVIS, POLK, WARDWELL, GARDINER & REED,  
Attorneys for Uebersee Finanz-Korpora-  
tion A. G., Appearing Specially for  
the Purpose only of Application on  
Form EG-18.

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SUPPLEMENTAL MEMORANDUM  
IN THE  
DEPARTMENT OF THE TREASURY,  
OF THE UNITED STATES OF AMERICA.

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In the Matter  
of

The Application of UEBERSEE FINANZ KÖRPERATION AKTIEN  
GESELLSCHAFT, regarding Gold held for its Account in  
the United States.

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STATEMENT.

At our informal conference at the Treasury on June 8th, when there were submitted the five affidavits discussed in our memorandum of that date, the suggestion was made that the Treasury would be interested in the relationship of Theodore Hoffacker to Uebersee (if any) and to Fritz

von Opel, and likewise the extent of Uebersee's interest in and the nature of its connection with domestic corporations doing business in the United States.

As these questions were not fully covered in our original papers, we have taken the liberty of obtaining, and submit herewith, the further affidavits of Theodore Hoffacker, verified June 12, 1935, and of Fritz von Opel verified on the same date, together with a letter from the Secretary of Harvard Brewing Co. (Delaware) dated June 11th with attached statement of facts of record regarding the corporation.

#### 1. *Summary of Additional Facts Shown.*

Without reviewing in any detail the additional facts set forth in these papers, for which we would rather refer to the affidavits themselves, we may summarize them for the purpose of discussion as follows:

(a) The only contractual relationship which Mr. Hoffacker has ever had was with Fritz von Opel. It was partly written and partly oral. In so far as written, it is contained in the letter agreement dated October 30, 1931, of which a copy was attached to von Opel's affidavit first submitted as Exhibit V. *This agreement, it will be noted, related only to trading in 47,625 shares of General Motors Corporation common stock which never belonged to Uebersee.*

In so far as oral, the agreement between Mr. Hoffacker and Mr. von Opel is set forth fully at pages 2-3, and was to the effect that Mr. Hoffacker would have 20% of any profit ultimately realized by Mr. von Opel upon the sale of securities purchased on his advice. Mr. Hoffacker dealt with Mr. von Opel personally, and this agreement does not apply to any securities purchased by Uebersee.

Mr. Hoffacker as investment counsel did not deal with Uebersee directly or indirectly. He learned that Mr. von Opel had a power of attorney for Uebersee in 1932, but he



learned this fact quite collaterally. He dealt with Mr. von Opel as a principal and never as the representative of any company.

The compensation which Mr. Hoffacker has received for services rendered by him as investment counsel to Mr. von Opel has been limited to his 20% of the profit on the trading in the 47,625 shares of General Motors Corporation stock, which was substantial.\* The absence of any compensation to Mr. Hoffacker in respect of investments on which he advised Mr. von Opel and which Uebersee (rather than Mr. von Opel) made, is counterbalanced for Mr. Hoffacker by the emoluments he received as officer of the companies in which Uebersee has so invested. These emoluments are stated by him at page 5 of his affidavit, and amount according to our computation to something like \$29,200 annually.

(b) Uebersee holds some interest in four American corporations. These are Spur Distributing Co., Inc., a Delaware corporation; Harvard Brewing Co. (Delaware), a Delaware corporation; Oil Production, Inc., a Louisiana corporation, and Oil Refineries, Inc., a Louisiana corporation.

(c) In Spur, Uebersee owns 75,589 out of 140,000 shares of stock outstanding. In Harvard Brewing Co. (Delaware), it owns about 300,000 shares out of 525,605 outstanding. Harvard Brewing Co. (Delaware) owns all the capital stock of Harvard Brewing Co. (Massachusetts) which operates a brewery at Lowell, Massachusetts. Uebersee owns all the outstanding stock of Oil Refineries, Inc., together with a \$200,000 mortgage note on its property. It owns none of the outstanding stock of Oil Production, Inc.,

\* We are informed that Mr. Hoffacker's participation in this profit amounted to more than \$80,000.

but does own the outstanding bonds of that company in the amount of \$541,000.

(d) Mr. Hoffacker is Vice-President of Spur Distributing Co., Inc., and a director thereof. He is a director and Vice-President of Harvard Brewing Co. (Delaware) and President of Harvard Brewing Co. (Massachusetts). He is President of both Oil Production, Inc., and Oil Refineries, Inc., and a director of each. Mr. Fritz von Opel's only connection with any of these companies is as a director of Harvard Brewing Co. (Massachusetts), to which post he was elected on December 13, 1933.

(e) No officer or director or stockholder of Uebersee (other than Mr. von Opel as aforesaid) has any connection with these four American companies. The affairs of Spur are conducted under a management contract by J. Mc Houghland, the President. Oil Production, Inc., and Oil Refineries, Inc., are managed by Crutenden Engineering Company under management contracts. Mr. Hoffacker's affidavit, quoting telegrams from the officers of the respective companies, is emphatic to the effect that neither Uebersee as a corporation, nor Fritz von Opel personally has sought to dominate or has influenced the conduct of corporate affairs.

(f) Each of these four American corporations has its independent place of business, its regular directors' and stockholders' meetings, its corporate records kept under the custody of appropriate officers, and in all respects preserves its independence as a corporation.

NOTICE OF MOTION TO DISMISS.  
 DISTRICT COURT OF THE UNITED STATES,  
 SOUTHERN DISTRICT OF NEW YORK.  
 E. 86-319.

UEBERSSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

*Plaintiff,*

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL,  
 HENRY MARCH; and EDWARD E. THALMANN and ALEX-  
 ANDER B. SINGEL, as Trustees of the Estate of Ernest  
 Thalmann; Deceased; and VIRGINIA M. ROSENTHAL, PAUL  
 M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHRACH,  
 and FREDERICK M. HEIMERDINGER, as Executors of the  
 Estate of Moritz Rosenthal, Deceased; Co-partners  
 doing business as LADENBURG, THALMANN & Co., and  
 FEDERAL RESERVE BANK OF NEW YORK,

*Defendants:*

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of  
 EDWIN C. FRENCH, duly verified the 17th day of June, 1935,  
 the undersigned will move this Court at a stated term for  
 motions to be held on June 18, 1935, at 10:30 o'clock in the  
 forenoon of that date, or as soon thereafter as counsel can  
 be heard, for an order dismissing the bill of complaint  
 herein, upon the ground that said complaint fails to state  
 facts sufficient to constitute a cause of action as against  
 Federal Reserve Bank of New York, and for such other



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further and different relief to which defendant may be entitled.

Dated: New York, N. Y., June 17, 1935.

Yours, etc.,

WALTER S. LOGAN, Esq.,  
Solicitor for Defendant,  
Federal Reserve Bank of New York,  
Office & P. O. Address,  
No. 33 Liberty Street,  
Borough of Manhattan,  
New York, New York.

To:

ISIDOR J. KRESEL,  
Solicitor for Plaintiff,  
15 Broad Street,  
New York, New York.

ORDER DENYING MOTION, DATED JULY 15, 1935.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

E. 80-319.

UEBERSEE FINANZ-KORPORATION AKTIEN GESELLSCHAFT,

*Plaintiff,*

—against—

WALTER T. ROSEN, HARRY B. LAKE, PAUL M. ROSENTHAL,  
HENRY MARCH; and EDWARD E. THALMANN and ALEX-  
ANDER B. SIEGEL, as Trustees of the Estate of Ernest  
Thalmann Deceased; and VIRGINIA M. ROSENTHAL, PAUL  
M. ROSENTHAL, JOHN ROSENTHAL, SIDNEY BACHARACH,  
and FREDERICK M. HEIMERDINGER, as Executors of the  
Estate of Moritz Rosenthal, Deceased; Co-partners  
doing business as LADENBURG, THALMANN & Co., and  
FEDERAL RESERVE BANK OF NEW YORK,

*Defendants.*

A motion on behalf of plaintiff for an injunction *pendente lite* restraining the individual defendants above named, co-partners doing business as Ladenburg, Thalmann & Co., their agents, officers and employees, during the pendency of this action, and until the further order of this Court, from transferring, delivering, paying over or otherwise disposing of plaintiff's bags of United States gold coins mentioned in the bill of complaint herein, to any person, firm, body or corporation other than the plaintiff, and for other and further relief, having come on to be heard on the 18th day of June, 1935, pursuant to an order to show cause made herein on the 15th day of June,

1935, and upon reading and filing said order to show cause made herein on June 15, 1935, the affidavit of Isidor J. Kresel, sworn to the 15th day of June, 1935, and the bill of complaint herein, verified the 15th day of June, 1935, and the affidavit of Isidor J. Kresel, sworn to the 20th day of June, 1935, together with the documents therein referred to and identified, and the affidavit of Isidor J. Kresel, sworn to June 24, 1935, in support of said motion, and the affidavits of Friedrich Wille, sworn to the 18th day of June, 1935, and the 21st day of June, 1935, respectively; in opposition thereto, and after hearing Isidor J. Kresel, Esq., solicitor for the plaintiff (Isidor J. Kresel, Esq., and Bernard Hershkopf, Esq., of counsel), for said motion, and Messrs. Van Vorst, Siegel & Smith, solicitors for the individual defendants, co-partners doing business as Ladenburg, Thalmann & Co. (Arthur B. Brenner, Esq., of counsel), in opposition thereto, and due deliberation having been had,

Now, on motion of VAN VORST, SIEGEL & SMITH, solicitors for the individual defendants, co-partners doing business as Ladenburg, Thalmann & Co., it is hereby

ORDERED that plaintiff's said motion for an injunction *pendente lite* be and the same hereby is in all respects denied;

FURTHER ORDERED that the stay contained in the order to show cause made herein on the 15th day of June, 1935, restraining and staying the individual defendants, co-partners doing business as Ladenburg, Thalmann & Co., from transferring, delivering or paying over said bags of United States gold coins to the Federal Reserve Bank of New York or to any one other than the plaintiff, be and the same hereby is continued for the period of ten (10) days after service upon the plaintiff's solicitor of a copy of this order, with notice of entry thereof;